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Government of West Bengal
Legislative Department
The West Bengal Code

Second Edition
In Eight Volumes
Volume I

Bengal Regulations, Local Acts of the Governor General of India in Council, Local Acts of the Indian Legislature, Central Acts as modified in their application to West Bengal, Local Act made by the Governor General under section 67B of the Government of India Act and Regulations made under the Government of India Act, 1870, and the Government of India Act, 1935

(As modified up to the 31st December, 1964)

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P R E F A C E

This is the second Edition of the West Bengal Code, issued in eight volumes. In its get-up it follows very much the same pattern as that of the preceding edition. There is hardly any change worthy of mention, except that in order to make the work more useful, attempts have been made to include a larger number of references to Rules, Orders, Notifications, etc. issued under the various enactments in force in West Bengal.

This Volume I contains Bengal Regulations, Local Acts of the Governor General of India in Council, Local Acts of the Indian Legislature, Central Acts as modified in their application to West Bengal, Local Act made by the Governor General under section 67B of the Government of India Act, and Regulations made under the Government of India Act, 1870, and the Government of India Act, 1935, as modified upto the 31st December, 1964.

Since the issue of the last edition of the West Bengal Code considerable legislation has been enacted, among which there are numerous enactments containing repealing and amending provisions. Special attention has been given, and meticulous care taken, to incorporate *in loco* in the corresponding principal Acts, and it is hoped that no serious error or omission will be discovered.

I would like to place on record my deep sense of gratitude to Shri I. D. Jalan, Minister-in-charge of the Department of Excise and Judicial and Legislative Departments of the Government of West Bengal, whose support and encouragement has contributed in no small measure towards the issue of this publication. I would also offer my thanks to Shri P. M. Perris, Special Officer of this department, who has prepared this edition of the Code and has rendered valuable services in this connection.

S. SEN GUPTA,
*Secretary to the Government of West Bengal,
Legislative Department.*

CALCUTTA,
The 31st December, 1964.

CHRONOLOGICAL TABLE OF ENACTMENTS PRINTED IN THIS VOLUME.

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1793	25	... <i>Division of revenue-paying estates</i> ...		<i>Repealed by Ben. Reg. 19 of 1814.</i>
1793	26	... <i>Minority of Native land-holders</i> ...		} <i>Repealed by Act 29 of 1871.</i>
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1793	29	... <i>Salt Agents</i> ...		<i>Repealed by Ben. Reg. 10 of 1819.</i>
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1794	8	... <i>Registrars of Zilla and City Courts</i> ...		<i>Repealed by Act 8 of 1868.</i>
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1795	2	... <i>Temporary Settlement, Benares</i> ...		Not printed.
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1795	15	... The Benares Family Domains Regulation, 1795.		Not printed.
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1795	27	... <i>The Benares Permanent Settlement (Supplemental) Regulation, 1795.</i>		Not printed.
1795	28	... <i>Extending Ben. Reg. 36 of 1793 to Benares.</i>		<i>Repealed by Act 16 of 1864.</i>
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1795	31	... <i>Extending Ben. Reg. 40 of 1793 to Benares.</i>		<i>Repealed by Ben. Reg. 23 of 1814.</i>
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1797	14	... <i>Fines, Restitution of stolen property</i> ...		
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1800	3	... <i>Reference of appeals to Registrars</i> ...		<i>Repealed by Act 10 of 1861.</i>
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1800	5	... <i>Extending Ben. Reg. 7 of 1799 to Benares.</i>		<i>Repealed by Act 16 of 1874.</i>
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1802	2	... Duty on spirit made in European fashion ...		<i>Repealed by Act 21 of 1856.</i>
1802	3	... Security from defendants: Pauper-suits.		<i>Repealed by Act 10 of 1861.</i>
1802	4	... Second Court of Appeal, Dacca ...		<i>Repealed by Act 8 of 1868.</i>
1802	5	... Customs and Town duties ...		<i>Repealed by Ben. Reg. 9 of 1810.</i>
1802	6	... Sacrifice of children ...		<i>Repealed by Act 17 of 1862.</i>
1802	7	... Exemption from Customs duties ...		<i>Repealed by Ben. Reg. 9 of 1810.</i>
1803	1	... Codifying Regulations, Ceded Provinces		<i>Repealed by Act 8 of 1868.</i>
1803	2	... Zilla Courts, Ceded Provinces ...		<i>Repealed by Act 6 of 1871.</i>
1803	3	... Civil suits, Ceded Provinces ...		<i>Repealed (except in certain areas) by Act 19 of 1873. Not printed.</i>
1803	4	... Provincial Court of Appeal, Ceded Provinces.		<i>Repealed by Act 10 of 1861.</i>
1803	5	... Appeals from Provincial Court of Appeal, Ceded Provinces.		<i>Repealed by Act 6 of 1874.</i>
1803	6	... Powers and duties of Magistrates, Ceded Provinces.		<i>Repealed by Act 8 of 1868.</i>
1803	7	... Courts of Circuit, Ceded Provinces ...		<i>Repealed by Act 8 of 1868.</i>
1803	8	... Nizamut Adalat, Ceded Provinces ...		<i>Repealed by Act 29 of 1871.</i>
1803	9	... Power to propose Regulations, Ceded Provinces.		<i>Repealed by Act 8 of 1868.</i>

Year.	No.	Short title.	Page.	Remarks.
1	2	3	4	5
I.—Bengal Regulations—(Contd.)				
1803	10	... <i>Native Pleaders, Ceded Provinces</i> ...		<i>Repealed by Ben. Reg. 27 of 1814.</i>
1803	11	... <i>Native Law-officers, Ceded Provinces</i>		<i>Repealed by Act 11 of 1864.</i>
1803	12	... <i>Ministerial officers of Courts, Ceded Provinces.</i>		<i>Repealed by Act 29 of 1871.</i>
1803	13	... <i>Records of Courts, Ceded Provinces</i> ...		<i>Repealed by Act 16 of 1874.</i>
1803	14	... <i>Pauper-suits, Ceded Provinces</i> ...		<i>Repealed by Ben. Reg. 28 of 1814.</i>
1803	15	... <i>Judges, Ceded Provinces</i> ...		<i>Repealed by Act 8 of 1868.</i>
1803	16	... <i>Trial of Small Causes by Natives, Ceded Provinces.</i>		<i>Repealed by Ben. Reg. 23 of 1814.</i>
1803	17	... <i>Registry for Wills and Decds, Ceded Provinces.</i>		<i>Repealed by Act 16 of 1864.</i>
1803	18	... <i>British subjects, Ceded Provinces</i> ...		<i>Repealed by Act 8 of 1868.</i>
1803	19	... <i>Loans by Civilians, Ceded Provinces</i> ...		<i>Repealed by Act 15 of 1874.</i>
1803	20	... <i>State offences, Ceded Provinces</i> ...		<i>Repealed by Act 17 of 1862.</i>
1803	21	.... <i>Reference to arbitration, Ceded Provinces.</i>		<i>Repealed by Act 10 of 1861.</i>
1803	22	... <i>Construction of regulations, Ceded Provinces.</i>		<i>Repealed by Act 8 of 1868.</i>
1803	23	... <i>Revenue-records, Ceded Provinces</i> ...		<i>Repealed (except in certain areas) by Act 19 of 1873. Not printed.</i>
1803	24	... <i>Pensions, Ceded Provinces</i> ...		<i>Repealed by Act 23 of 1871.</i>
1803	25	... <i>Board of Revenue Collectors, Ceded Provinces.</i>		<i>Repealed (except in certain areas) by Act 19 of 1873. Not printed.</i>

CHRONOLOGICAL TABLE OF ENACTMENTS. xxi

Year.	No.	Short title.	Page.	Remarks.
1	2	3	4	5
I.—Bengal Regulations—(Contd.)				
1803	26	... <i>Sale and division of revenue-paying lands, Ceded Provinces.</i>		<i>Repealed by Act 29 of 1871.</i>
1803	27	... <i>Realization of land-revenue, Ceded Provinces.</i>		<i>Repealed (except in certain areas) by Act 19 of 1873.</i> <i>Not printed.</i>
1803	28	... <i>Distress for rent, Ceded Provinces</i>		<i>Repealed by Act 10 of 1859.</i>
1803	29	... <i>Patwaris, Ceded Provinces</i>		<i>Repealed by Ben. Reg. 12 of 1817.</i>
1803	30	... <i>Grant of pattas, Ceded Provinces</i>		<i>Repealed (except in certain areas) by Act 19 of 1873.</i> <i>Not printed.</i>
1803	31	... <i>Non-badshahi grants, Ceded Provinces</i>		<i>Repealed (except in certain areas) by Act 19 of 1873.</i> <i>Not printed.</i>
1803	32	... <i>Boundary disputes, Ceded Provinces</i>		<i>Repealed by Act 4 of 1840.</i>
1803	33	... <i>The United Provinces Native Revenue-officers' Regulation, 1803.</i>		<i>Not printed.</i>
1803	34	... <i>Interest, Ceded Provinces</i>		<i>Repealed by Act 15 of 1874.</i>
1803	35	... <i>Police, Ceded Provinces</i>		<i>Repealed by Act 29 of 1871.</i>
1803	36	... <i>Badshahi grants, Ceded Provinces</i>		<i>Repealed (except in certain areas) by Act 19 of 1873.</i> <i>Not printed.</i>
1803	37	... <i>Company's Investment, Ceded Provinces.</i>		<i>Repealed by Act 8 of 1868.</i>
1803	38	... <i>Abolition of transit-duties, Ceded Provinces.</i>		<i>Repealed by Ben. Reg. 9 of 1810.</i>
1803	39	... <i>Salt, Ceded Provinces</i>		<i>Repealed by Ben. Reg. 6 of 1804.</i>
1803	40	... <i>Sale of spirits, Ceded Provinces</i>		<i>Repealed by Ben. Reg. 10 of 1813.</i>
1803	41	... <i>Cultivation of poppy, Ceded Provinces</i>		<i>Repealed by Ben. Reg. 13 of 1816.</i>

xxii CHRONOLOGICAL TABLE OF ENACTMENTS.

Year.	No.	Short title.	Page.	Remarks.
1	2	3	4	5
I.—Bengal Regulations—(Contd.)				
1803	42	... Registrar of Revenue-paying estates, Ceded Provinces.		Repealed (except in certain areas) by Act 19 of 1873. Not printed.
1803	43	... Court-fees, Ceded Provinces ...		Repealed by Act 16 of 1874.
1803	44	... Repair of Water-courses, etc., Ceded Provinces.		Repealed by Act 26 of 1871.
1803	45	... Coinage, Ceded Provinces ...		Repealed by Act 8 of 1868.
1803	46	... Kazi-ul-kuzat, Ceded Provinces ...		Repealed by Act 11 of 1864.
1803	47	... Power to grant leases, Ceded Provinces		Repealed by Act 29 of 1871.
1803	48	... Adulteration of salt ...		Repealed by Ben. Reg. 10 of 1819.
1803	49	... Assistant Judges: Appeals ...		Repealed by Act 16 of 1874.
1803	50	... Witnesses: Oaths ...		Repealed by Act 17 of 1862.
1803	51	... Court of Circuit, Ceded Provinces ...		Repealed by Act 8 of 1868.
1803	52	... Court of Wards, Ceded Provinces ...		Repealed (in Agra, except in certain areas) by Act 19 of 1873. Repealed (in the C. P. and the Sambalpur District) by Act 17 of 1885. Not printed.
1803	53	... Criminal law ...		Repealed by Act 17 of 1862.
1803	54	... Postponing Ben. Reg. 35 of 1793, sec. 20, in Chittagong.		Repealed by Act 8 of 1868.
1804	1	... Invalid jagirs and pensions ...		Repealed by Act 29 of 1871.
1804	2	... Jail deliveries ...		Repealed by Act 8 of 1868.
1804	3	... Criminal law, Ceded Provinces ...		Repealed by Act 17 of 1862.

CHRONOLOGICAL TABLE OF ENACTMENTS. xxiii

Year.	No.	Short title.	Page.	Remarks.
1	2	3	4	5
I.—Bengal Regulations—(Contd.)				
1804	4	... <i>Criminal law, Cuttack</i> ...		<i>Repealed by Act 8 of 1868.</i>
1804	5	... <i>Native officers</i> ...		<i>Repealed by Act 16 of 1874.</i>
1804	6	... <i>Salt, Ceded and Conquered Provinces and Benares.</i>		} <i>Repealed by Act 8 of 1868.</i>
1804	7	... <i>Duty on Salt, Ceded and Conquered Provinces.</i>		
1804	8	... <i>Zillas of Allahabad and Gorakhpur</i> ...		
1804	9	... <i>Criminal Procedure, ceded and Conquered Provinces.</i>		<i>Repealed by Act 10 of 1872.</i>
1804	10	... <i>The Bengal State-offences Regulation, 1804.</i>		<i>Repealed by Act 4 of 1922.</i>
1804	11	... <i>Collection of Customs, Ceded and Conquered Provinces.</i>		<i>Repealed by Ben. Reg. 9 of 1810.</i>
1805	1	... <i>Appeals from Courts at Chandernagore and Chinsurah.</i>		} <i>Repealed by Act 8 of 1868.</i>
1805	2	... <i>Limitation</i> ...		
1805	3	... <i>Punishment of Robbery</i> ...		<i>Repealed by Act 17 of 1882.</i>
1805	4	... <i>Company's Investment</i> ...		} <i>Repealed by Act 8 of 1868.</i>
1805	5	... <i>Settlement, Ceded Provinces</i> ...		
1805	6	... <i>Town-duties, Ceded and Conquered Provinces.</i>		<i>Repealed by Ben. Reg. 10 of 1810.</i>
1805	7	... <i>Covenanted Servants engaging in Trade</i>		<i>Repealed by Act 8 of 1868.</i>

xxiv CHRONOLOGICAL TABLE OF ENACTMENTS.

Year.	No.	Short title.	Page.	Remarks
1	2	3	4	5
I.—Bengal Regulations—(Contd.)				
1805	18	Extending certain Regulations, Con- quered Provinces.		Repealed (except in certain areas) by Act 19 of 1873. Not printed.
1805	19	Settlement, Conquered Provinces		
1805	10	<i>Chief Justice, Sadar Diwani and Niza- mat Adalat.</i>		Repealed by Act 16 of 1874.
1805	11	<i>Coinage, Conquered Provinces</i>		Repealed by Act 8 of 1868.
1805	12	The Cuttack Land-revenue Regulation, 1805.	97	
1805	13	The Cuttack Police Regulation, 1805.	111	
1805	14	<i>Civil suits, Cuttack</i>		Repealed by Act 12 of 1876.
1805	15	<i>Trials by Native Law-officers</i>		Repealed by Act 10 of 1861.
1805	16	<i>Chandernagore and Chinsurah</i>		Repealed by Act 8 of 1868.
1805	17	<i>Joint undivided estates</i>		Repealed by Act 29 of 1871.
1805	18	<i>Jungle Mahals</i>		Repealed by Act 8 of 1868.
1805	19	<i>Nawab Nazim</i>		Repealed by Act 27 of 1854.
1806	1	<i>Murshidabad</i>		Repealed by Act 8 of 1868.
1806	2	<i>Civil Procedure</i>		Repealed by Act 10 of 1861.
1806	3	<i>Silver and Copper coinage, Ceded and Conquered Provinces.</i>		Repealed by Act 8 of 1868.

CHRONOLOGICAL TABLE OF ENACTMENTS. xxv

Year.	No.	Short title.	Page.	Remarks.
1	2	3	4	5
I.—Bengal Regulations—(Contd.)				
1806	4	... <i>Pilgrimage to Temple of Jagannath</i>		<i>Repealed by Act 10 of 1840.</i>
1806	5	... <i>Tax under Ben. Reg. 4 of 1806</i> ...		<i>Repealed by Act 10 of 1840.</i>
1806	6	... <i>Repair of Embankments</i> ...		} <i>Repealed by Act 16 of 1874.</i>
1806	7	... <i>Court of 24 Parganas</i> ...		
1806	8	... <i>Complaints against Collectors</i> ...		
1806	9	... <i>Salt</i> ...		<i>Repealed by Ben. Reg. 10 of 1819.</i>
1806	10	... <i>Complaints against Judges</i> ...		<i>Repealed by Act 29 of 1871.</i>
1806	11	... <i>The Bengal Troops Transport and Travellers' Assistance Regulation, 1806.</i>		<i>Repealed by Act 36 of 1957.</i>
1806	12	... <i>Parganas of Sonkh, Sonsa and Sahar</i>		<i>Repealed by Act 15 of 1874.</i>
1806	13	... <i>Stamps</i> ...		<i>Repealed by Ben. Reg. 1 of 1841.</i>
1806	14	... <i>Saharanpore</i> ...		<i>Repealed by Act 15 of 1874.</i>
1806	15	... <i>European British offenders</i> ...		<i>Repealed by Act 17 of 1862.</i>
1806	16	... <i>Nazim of Bengal</i> ...		<i>Repealed by Act 27 of 1854.</i>
1806	17	... <i>The Bengal Land (Redemption and Foreclosure) Regulation, 1806.</i>		<i>Repealed (except in the Punjab and the N. W. Frontier Province) by Act 4 of 1882.</i> <i>Not printed.</i>
1806	18	... <i>Canal-tolls, Bengal</i> ...		<i>Repealed by Act 12 of 1873.</i>
1806	19	... <i>Duty on spirits</i> ...		<i>Repealed by Ben. Reg. 9 of 1810.</i>

xxvi CHRONOLOGICAL TABLE OF ENACTMENTS.

Year.	No.	Short title.	Page.	Remarks.
1	2	3	4	5
I.—Bengal Regulations—(Contd.)				
1806	20	... <i>Sale of spirits in Cantonments</i> ...		<i>Repealed by Ben. Reg. 10 of 1813.</i>
1806	21	... <i>Tahasildars, Benares, etc.</i> ...		<i>Repealed by Act 29 of 1871.</i>
1806	22	... <i>Pensions</i> ...		<i>Repealed by Act 23 of 1871.</i>
1807	1	... <i>Provincial Courts of Appeal</i> ...		<i>Repealed by Act 10 of 1861.</i>
1807	2	... <i>Punishment of Perjury and Forgery</i> ...		<i>Repealed by Act 17 of 1862.</i>
1807	3	... <i>College at Fort William</i> ...		<i>Repealed by Ben. Reg. 20 of 1841.</i>
1807	4	... <i>Rates of issuing and receiving rupees</i> ...		<i>Repealed by Act 8 of 1868.</i>
1807	5	... <i>Cultivation of poppy</i> ...		<i>Repealed by Ben. Reg. 13 of 1816.</i>
1807	6	... <i>Partition of small estates</i> ...		<i>Repealed by Ben. Reg. 19 of 1814.</i>
1807	7	... <i>Payment of revenue, Benares</i> ...		<i>Repealed (except in certain areas) by Act 19 of 1873.</i> <i>Not printed.</i>
1807	8	... <i>Stamps</i> ...		<i>Repealed by Ben. Reg. 1 of 1814.</i>
1807	9	... <i>Criminal Procedure</i> ...		<i>Repealed by Act 17 of 1862.</i>
1807	10	... <i>Settlement, Ceded and Conquered Provinces.</i>		
1807	11	... <i>Control of Customs</i> ...		<i>Repealed by Act 8 of 1868.</i>
1807	12	... <i>Police, Lower Provinces</i> ...		
1807	13	... <i>Currency</i> ...		

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Year.	No.	Short title.	Page.	Remarks.
1	2	3	4	5
I.—Bengal Regulations—(Contd.)				
1807	14	... <i>Police, Benares, etc.</i> ...		<i>Repealed by Act 29 of 1871.</i>
1807	15	... <i>Judges, Sadar Diwani and Nizamat Adalat.</i>		<i>Repealed by Act 8 of 1868.</i>
1808	1	... <i>Tax on Tari</i> ...		<i>Repealed by Ben. Reg. 10 of 1813.</i>
1808	2	... <i>Minors, Chandernagore</i> ...		<i>Repealed by Act 8 of 1868.</i>
1808	3	... <i>Sale of Tari</i> ...		<i>Repealed by Ben. Reg. 10 of 1813.</i>
1808	4	... <i>Kanungos, Benares, etc.</i> ...		<i>Repealed (except in certain areas) by Act 19 of 1873. Not printed.</i>
1808	5	... <i>Settlement, Ceded Provinces</i> ...		<i>Repealed by Act 29 of 1871.</i>
1808	6	... <i>Settlement, Cuttack</i> ...		<i>Repealed by Act 8 of 1868.</i>
1808	7	... <i>Registers of land free of assessment, Ceded and Conquered Provinces.</i>		<i>Repealed by Act 29 of 1871.</i>
1808	8	... <i>Punishment of Robbery</i> ...		<i>Repealed by Act 17 of 1862.</i>
1808	9	... <i>Dacoits</i> ...		<i>Repealed by Act 4 of 1844.</i>
1808	10	... <i>Superintendent of Police, Bengal</i> ...		<i>Repealed by Act 8 of 1868.</i>
1808	11	... <i>Rent payable by heirs of invalid jagirdars.</i>		<i>Repealed by Act 29 of 1871.</i>
1808	12	... <i>Administration of Justice, Serampore</i>		<i>Repealed by Ben. Reg. 3 of 1816.</i>
1808	13	... <i>Civil Procedure</i> ...		<i>Repealed by Act 10 of 1861.</i>

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Year.	No.	Short title.	Page.	Remarks.
1	2	3	4	5
I.—Bengal Regulations—(Contd.)				
1809	1	... Board of Commissioners, Upper Provinces.		} Repealed by Act 8 of 1868.
1809	2	... General Courts-martial ...		
1809	3	... Police in Cantonments ...		Repealed by Act 29 of 1871.
1809	4	... Temple of Jagannath ...		Repealed by Act 10 of 1840.
1809	5	... Trial of Natives committing offences abroad.		Repealed by Act 1 of 1849.
1809	6	... Cultivation of poppy ...		Repealed by Ben. Reg. 13 of 1816.
1809	7	... Stamps ...		Repealed by Ben. Reg. 1 of 1814.
1809	8	... Native officers ...		Repealed by Act 16 of 1874.
1809	9	... Administration of Justice at Chinsurah and Chandernagore.		} Repealed by Act 8 of 1868.
1809	10	... Copper coinage, Benares ...		
1810	1	... Native Law-officers ...		Repealed by Act 17 of 1862.
1810	2	... Robberies by Cozaucks ...		Repealed by Ben. Reg. 15 of 1812.
1810	3	... Oaths of Paupers ...		Repealed by Ben. Reg. 28 of 1814.
1810	4	... Commissioner in Cuttack ...		Repealed by Act 8 of 1868.
1810	5	... Division of revenue-paying estates ...		Repealed by Ben. Reg. 19 of 1814.
1810	6	... Information of robberies ...		Repealed by Act 10 of 1872.

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Year.	No.	Short title.	Page.	Remarks.
1	2	3	4	5
I.—Bengal Regulations—(contd.)				
1810	7	... <i>Canal tolls</i> ...		<i>Repealed by Act 22 of 1836.</i>
1810	8	... <i>Superintendent of Police</i> ...		<i>Repealed by Act 8 of 1808.</i>
1810	9	... <i>Customs</i> ...		<i>Repealed by Act 6 of 1803.</i>
1810	10	... <i>Town duties</i> ...		<i>Repealed by Act 16 of 1871.</i>
1810	11	... <i>Temple of Jagannath</i> ...		<i>Repealed by Act 10 of 1810.</i>
1810	12	... <i>Amending Ben. Regs. 7 and 10 of 1809</i>		<i>Repealed by Act 8 of 1808.</i>
1810	13	... <i>Civil Procedure</i> ...		<i>Repealed by Act 10 of 1861.</i>
1810	14	... <i>Criminal Procedure</i> ...		<i>Repealed by Act 17 of 1862.</i>
1810	15	... <i>House tax</i> ...		<i>Repealed by Ben. Reg. 7 of 1812.</i>
1810	16	... <i>Magistrates</i> ...		<i>Repealed by Act 10 of 1872.</i>
1810	17	... <i>Salt (Agra)</i> ...		Repealed in part by Ben. Reg. 20 of 1817. Repealed in part by Ben. Reg. 16 of 1829. Repealed in part by Act 11 of 1836. Residue repealed by Act 11 of 1843. Not printed.
1810	18	... <i>Duties on Pilgrims</i> ...		<i>Repealed by Act 10 of 1810.</i>
1810	19	... <i>The Bengal Charitable Endowments, Public Buildings and Escheats Regulation, 1810.</i>	123	
1810	20	... <i>Military bazars</i> ...		Repealed (so such as concerns Military Courts of Requests) by Act 11 of 1841. Repealed in part by Act 22 of 1864. Repealed in part by Act 16 of 1864. Repealed in part by Act 12 of 1876. Repealed in part by Act 10 of 1877. Repealed in part by Act 8 of 1887. Repealed (except in Southal Parganas) by Act 13 of 1889. Not printed.
1811	1	... <i>House-breaking : Stolen goods, B. B & O.</i>		<i>Repealed by Act 10 of 1872.</i>
1811	2	... <i>Invalid Native officers</i> ...		<i>Repealed by Act 23 of 1871.</i>

XXX CHRONOLOGICAL TABLE OF ENACTMENTS.

Year.	No.	Short title.	Page.	Remarks.
1	2	3	4	5
I.—Bengal Regulations—(contd.)				
1811	3	... Trade of foreign nations ...		Repealed by Act 8 of 1868.
1811	4	... Exemption from house-tax ...		Repealed by Ben. Reg. 7 of 1812.
1811	5	... Duty on pachwai ...		Repealed by Ben. Reg. 10 of 1813.
1811	6	... Repealing part of Beh. Reg. 27 of 1793, B. B. & O.		Repealed by Act 8 of 1868.
1811	7	... Police ...		Repealed by Act 17 of 1862.
1811	8	... Modifying Ben. Regs. 31 and 35 of 1803		Repealed by Ben. Reg. 2 of 1819.
1811	9	... Division of estates ...		Repealed by Act 16 of 1874.
1811	10	... Importation of slaves ...		Repealed by Act 8 of 1868.
1811	11	... Jama on divided estates ...		Repealed (in former Province of Bengal) by Ben. Act 8 of 1876. Repealed (in Agra) by Act 19 of 1863. Repealed (in Assam) by Reg. 1 of 1886. Not printed.
1811	12	... Saday Diwani Adalat ...		Repealed by Act 8 of 1868.
1811	13	... Board of Revenue. B. B. & O. Cuttack.		Repealed by Act 29 of 1871.
1811	14	... Transportation. 24-Parganas ...		Repealed by Act 17 of 1862.
1812	1	... Duty on horses : Export of Woollens. Bengal.		Repealed by Act 8 of 1868.
1812	2	... Coinage of gold and silver ...		Repealed by Act 23 of 1870.
1812	3	... Criminal Procedure, etc. ...		Repealed by Act 16 of 1874.

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Year.	No.	Short title.	Page.	Remarks.
1	2	3	4	5
I.—Bengal Regulations—(contd.)				
1812	4	... <i>Suits by or against Native Princes</i> ...		<i>Repealed by Act 10 of 1861.</i>
1812	5	... The Bengal Land-revenue Sales Regulation, 1812.	129	
1812	6	... <i>Bond under Ben. Reg. 3 of 1811</i> ...		<i>Repealed by Ben. Reg. 7 of 1818.</i>
1812	7	... <i>Rescinding Ben. Regs. 15 of 1810 and 4 of 1811.</i>		<i>Repealed by Act 8 of 1868.</i>
1812	8	... <i>Saltpetre</i> ...		<i>Repealed by Ben. Reg. 4 of 1814.</i>
1812	9	... <i>Settlement of Ceded Provinces</i> ...		<i>Repealed by Act 29 of 1871.</i>
1812	10	... <i>Settlement of Conquered Provinces and Cuttack.</i>		
1812	11	... The Bengal Foreign Immigrants Regulation, 1812.	133	
1812	12	... <i>Stamps</i> ...		<i>Repealed by Ben. Reg. 1 of 1814.</i>
1812	13	... <i>Sale of Spirits</i> ...		<i>Repealed by Ben. Reg. 10 of 1813.</i>
1812	14	... <i>Leases, Ceded and Conquered Provinces, Cuttack.</i>		<i>Repealed by Act 29 of 1871.</i>
1812	15	... <i>Extending part of Ben. Reg. 1 of 1811</i>		<i>Repealed by Act 16 of 1874.</i>
1812	16	... <i>Execution by Judge of 24-Parganas of Judgments of Calcutta Court of Requests.</i>		<i>Repealed by Act 8 of 1868.</i>
1812	17	... <i>Duties under Ben. Reg. 1 of 1812</i> ...		<i>Repealed by Ben. Reg. 14 of 1813.</i>
1812	18	... The Bengal Leases and Land-revenue Regulation, 1812.	137	
1812	19	... <i>Collection of Customs and Town-duties</i>		<i>Repealed by Act 8 of 1868.</i>

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Year.	No.	Short title.	Page.	Remarks.
1	2	3	4	5
I.—Bengal Regulations —(contd.)				
1812	20	... <i>Registry of Deeds</i> ...		<i>Repealed by Act 16 of 1864.</i>
1812	21	... <i>Repealing part of Ben. Reg. 1 of 1811</i>		<i>Repealed by Act 8 of 1868.</i>
1812	22	... <i>Territories bordering on Bundelkhand</i>		<i>Repealed by Act 1 of 1903.</i>
1813	1	... <i>Settlement of Cuttack, etc.</i> ...		<i>Repealed by Act 8 of 1868.</i>
1813	2	... <i>For preventing Native officers from using public money.</i>		<i>Repealed by Act 29 of 1871.</i>
1813	3	... <i>Review in appealable Civil cases</i> ...		<i>Repealed by Ben. Reg. 26 of 1814.</i>
1813	4	... <i>Toll on boats passing through certain rivers.</i>		<i>Repealed by Ben. Reg. 8 of 1824.</i>
1813	5	... <i>Modifying Ben. Regs. 19 and 37 of 1793</i>		<i>Repealed by Ben. Reg. 2 of 1819.</i>
1813	6	... <i>Referring land-suits to arbitration</i> ...		<i>Repealed by Act 10 of 1861.</i>
1813	7	... <i>Extending Ben. Reg. 3 of 1801 and Ben. Reg. 8 of 1794, s. 13.</i>		<i>Repealed by Act 8 of 1868.</i>
1813	8	... <i>Trial of persons committing offences abroad.</i>		<i>Repealed by Act 1 of 1849.</i>
1813	9	... <i>Transportation</i> ...		<i>Repealed by Act 17 of 1862.</i>
1813	10	... <i>Manufacture and sale of spirits</i> ...		<i>Repealed by Act 21 of 1856.</i>
1813	11	... <i>Pensions</i> ...		<i>Repealed by Act 23 of 1871.</i>
1813	12	... <i>Collection of Customs and Town-duties</i>		<i>Repealed by Act 8 of 1868.</i>
1813	13	... <i>Police Chaukidars, Dacca, etc.</i>		<i>Repealed by Ben. Reg. 22 of 1816.</i>

CHRONOLOGICAL TABLE OF ENACTMENTS. xxxiii

Year.	No.	Short title.	Page.	Remarks.
1	2	3	4	5
I.—Bengal Regulations—(contd.)				
1813	14	... <i>Import-duties on horses</i> ...		<i>Repealed by Act 8 of 1868.</i>
1813	15	... <i>Diwan to Collectors</i> ...		
1813	16	... <i>Rescinding Ben. Reg. 13 of 1806, s. 10</i>		<i>Repealed by Ben. Reg. 1 of 1814.</i>
1813	17	... <i>Charges against European officers</i> ...		<i>Repealed by Act 26 of 1839.</i>
1814	1	... <i>Stamps</i> ...		<i>Repealed by Ben. Reg. 10 of 1829.</i>
1814	2	... <i>Suits against public officers</i> ...		<i>Repealed by Act 10 of 1861.</i>
1814	3	... <i>Extending Ben. Reg. 13 of 1813</i> ...		<i>Repealed by Ben. Reg. 22 of 1816.</i>
1814	4	... <i>Repealing Ben. Reg. 8 of 1812</i> ...		
1814	5	... <i>Judges of Provincial Courts of Appeal</i>		<i>Repealed by Act 8 of 1868.</i>
1814	6	... <i>Modifying Ben. Regs. 9 of 1810 and 1 of 1812.</i>		<i>Repealed by Act 12 of 1873.</i>
1814	7	... <i>Copper Coinage, Benares</i> ...		<i>Repealed by Act 8 of 1868.</i>
1814	8	... <i>Liability of Zemindars to give information of murders, etc.</i>		<i>Repealed by Act 10 of 1872.</i>
1814	9	... <i>Explaining Ben. Regs. 13 of 1813 and 3 of 1814.</i>		<i>Repealed by Act 8 of 1868.</i>
1814	10	... <i>Explaining Ben. Reg. 1 of 1814</i> ...		
1814	11	... <i>House-breaking</i> ...		<i>Repealed by Act 17 of 1862.</i>
1814	12	... <i>Pensions to invalid Sepoys</i> ...		<i>Repealed by Act 6 of 1849.</i>

xxxiv CHRONOLOGICAL TABLE OF ENACTMENTS.

Year.	No.	Short title.	Page.	Remarks.
1	2	3	4	5
I.—Bengal Regulations—(contd.)				
1814	13	... <i>Abolition of Kotwal in Dacca, etc.</i>		<i>Repealed by Act 8 of 1868.</i>
1814	14	... <i>Twenty-four Parganas</i> ...		<i>Repealed by Ben. Reg. 8 of 1832.</i>
1814	15	... <i>Convictions for several offences</i> ...		<i>Repealed by Act 17 of 1862.</i>
1814	16	... <i>Extending Ben. Reg. 13 of 1813</i> ...		<i>Repealed by Ben. Reg. 22 of 1816.</i>
1814	17	... <i>Recovery of arrears due from distillers</i>		<i>Repealed by Act 21 of 1856.</i>
1814	18	... <i>Sales for arrears of revenue</i> ...		<i>Repealed by Ben. Reg. 11 of 1822.</i>
1814	19	... <i>Partition of Revenue-paying estates</i> ...		Repealed (in Agra) by Act 19 of 1869. Repealed (in former Province of Bengal) by Ben. Act 8 of 1876. Repealed (in Assam) by Reg. 1 of 1886. Not printed.
1814	20	... <i>Rescinding Regulations relating to College of Fort William.</i>		<i>Repealed by Act 8 of 1868.</i>
1814	21	... <i>Preventing Zilla Judges and Collectors from employing Native Creditors.</i>		<i>Repealed by Act 29 of 1871.</i>
1814	22	... <i>Salt, Cuttack</i> ...		<i>Repealed by Ben. Reg. 10 of 1819.</i>
1814	23	... <i>Munsifs and Sadar Amins</i> ...		<i>Repealed by Act 16 of 1868.</i>
1814	24	... <i>Zila and City Courts</i> ...		<i>Repealed by Act 10 of 1861.</i>
1814	25	... <i>Sadar Diwani Adalat and Provincial Courts.</i>		<i>Repealed by Act 16 of 1874.</i>
1814	26	... <i>Civil Procedure</i> ...		<i>Repealed by Act 12 of 1873.</i>
1814	27	... <i>Vakils</i> ...		<i>Repealed by Act 16 of 1874.</i>
1814	28	... <i>Pauper-sutors</i> ...		<i>Repealed by Act 10 of 1861.</i>

CHRONOLOGICAL TABLE OF ENACTMENTS. xxxv

Year.	No.	Short Title.	Page.	Remarks.
1	2	3	4	5
I.—Bengal Regulations —(contd.)				
1814	29	... The Bengal Ghatwali Lands Regulation, 1814.	137	
1815	1	... <i>Mukarrari grants, Ceded and Conquered Provinces.</i>		<i>Repealed by Act 29 of 1871.</i>
1815	2	... <i>Extending Ben. Reg. 24 of 1811, s. 12, cl. 7.</i>		<i>Repealed by Act 10 of 1861.</i>
1815	3	... <i>Settlement of Cuttack</i> ...		} <i>Repealed by Act 8 of 1868.</i>
1815	4	... <i>Collection of Customs</i> ...		
1815	5	... <i>Pargana of Bogri</i> ...		<i>Repealed by Ben. Reg. 9 of 1817.</i>
1816	1	... <i>Superintendence of revenues, Benares and Behar.</i>		<i>Repealed by Ben. Reg. 3 of 1822.</i>
1816	2	... <i>Kanungos, Behar</i> ...		
1816	3	... <i>Repealing Ben. Reg. 12 of 1808</i>		<i>Repealed by Act 8 of 1868.</i>
1816	4	... <i>Petitions by prisoners</i> ...		
1816	5	... The Bengal Kanungos Regulation, 1816.	139	
1816	6	... <i>Settlement, Cuttack, etc.</i> ...		<i>Repealed by Act 8 of 1868.</i>
1816	7	... <i>Amrat Rao's Jagir</i> ...		<i>Repealed by Act 17 of 1853.</i>
1816	8	... <i>Superintendent and Remembrancer of Legal Affairs.</i>		<i>Repealed by Ben. Reg. 13 of 1829.</i>
1816	9	... <i>The Sundarbans Regulation, 1816</i> ...		<i>Repealed by Ben. Act 1 of 1905.</i>
1816	10	... <i>Export and Import of Saltpetre</i> ...		<i>Repealed by Ben. Reg. 15 of 1825.</i>
1816	11	... <i>Succession, Cuttack</i> ...		<i>Repealed by Act 11 of 1893.</i>

xxxvi CHRONOLOGICAL TABLE OF ENACTMENTS.

Year.	No.	Short title.	Page.	Remarks.
1	2	3	4	5
I.—Bengal Regulations —(contd.)				
1816	12	... Custom house, Cox's Bazar ...		Repealed by Act 8 of 1868.
1816	13	... Opium ...		Repealed by Act 13 of 1857.
1816	14	... Jails ...		Repealed by Act 26 of 1870.
1816	15	... Trial of suits to which Sepoys are parties.		Repealed by Act 10 of 1861.
1816	16	... Settlement, Ceded Provinces ...		Repealed by Act 8 of 1868.
1816	17	... Police ...		Repealed by Act 16 of 1874.
1816	18	... Pargana of Hurdya ...		Repealed by Act 15 of 1874.
1816	19	... Ferries ...		Repealed by Ben. Reg. 6 of 1819.
1816	20	... Modifying Ben. Reg. 3 of 1811 ...		Repealed by Ben. Reg. 7 of 1818.
1816	21	... Copper Pice ...		Repealed by Act 8 of 1868.
1816	22	... Chaukidars of Police ...		Repealed by Act 20 of 1856.
1817	1	... Commissioner in Behar and Benares ...		Repealed by Ben. Reg. 3 of 1822.
1817	2	... Kanungos, Ramgarh, etc., Zilas ...		Repealed by Act 8 of 1868.
1817	3	... Petty suits ...		Repealed by Act 10 of 1861.
1817	4	... Dehra Dun ...		Repealed by Act 8 of 1868.
1817	5	... Hidden Treasure ...		Repealed by Act 6 of 1878.

CHRONOLOGICAL TABLE OF ENACTMENTS. xxxvii

Year.	No.	Short title.	Page.	Remarks.
1	2	3	4	5
1.—Bengal Regulations—(Contd.)				
1817	6	... <i>Explaining Ben. Reg. 24 of 1803, s. 2</i> ...		<i>Repealed by Act 23 of 1871.</i>
1817	7	... <i>Chaukidars of Police</i> ...		<i>Repealed by Act 20 of 1850.</i>
1817	8	... <i>Modifying Ben. Reg. 17 of 1813</i> ...		<i>Repealed by Act 26 of 1839.</i>
1817	9	... <i>Repealing Ben. Reg. 5 of 1815</i> ...		<i>Repealed by Act 8 of 1868.</i>
1817	10	... <i>Trial of persons committing offences in Kumaon.</i>		<i>Repealed by Act 10 of 1838.</i>
1817	11	... <i>Modifying Ben. Regs. 19 and 37 of 1793.</i>		<i>Repealed by Ben. Reg. 2 of 1819.</i>
1817	12	... <i>The Bengal Patwaris Regulation, 1817</i>	143	
1817	13	... <i>Kanungos, Midnapur</i> ...		<i>Repealed by Act 29 of 1871.</i>
1817	14	... <i>Amending Ben. Reg. 2 of 1812</i> ...		<i>Repealed by Act 23 of 1870.</i>
1817	15	... <i>Duty on Foreign Salt</i> ...		<i>Repealed by Act 16 of 1837.</i>
1817	16	... <i>Duty on Foreign Opium</i> ...		<i>Repealed by Act 29 of 1871.</i>
1817	17	... <i>Criminal Procedure</i> ...		<i>Repealed by Act 17 of 1862.</i>
1817	18	... <i>Oaths of office; Native officers</i> ...		<i>Repealed by Act 29 of 1871.</i>
1817	19	... <i>Civil Procedure; Arrears of rent</i> ...		<i>Repealed by Act 16 of 1861.</i>
1817	20	... <i>The Bengal Police Regulation, 1817</i>		Not printed.
1817	21	... <i>Modifying Ben. Reg. 4 of 1815</i> ...		<i>Repealed by Act 6 of 1863.</i>

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Year.	No.	Short title.	Page.	Remarks.
1	2	3	4	5
I.—Bengal Regulations—(Contd.)				
1817	22	... <i>Native Ministerial officers, Cuttack</i>		<i>Repealed by Ben. Reg. 5 of 1818.</i>
1817	23	... <i>Modifying Ben. Regs. 19 and 37 of 1793.</i>		<i>Repealed by Reg. 2 of 1819.</i>
1817	24	... <i>Commission in Behar and Benares</i>		<i>Repealed by Act 29 of 1871.</i>
1817	25	... <i>Pice</i>	}	<i>Repealed by Act 8 of 1868.</i>
1817	26	... <i>Farukhabad rupees</i>		
1818	1	... <i>Kanungos, 24-Parganas, etc.</i> ...		<i>Repealed by Act 29 of 1871.</i>
1818	2	... <i>Ilaka of Khonda</i>		<i>Repealed by Act 15 of 1874.</i>
1818	3	... <i>The Bengal State-Prisoners Regulation, 1818.</i>		<i>Repealed by Act 48 of 1952.</i>
1818	4	... <i>Diwani Adalat, Saharanpore</i> ...		<i>Repealed by Act 15 of 1874.</i>
1818	5	... <i>Commissioner, Zilla Cuttack</i> ...		<i>Repealed by Act 8 of 1868.</i>
1818	6	... <i>Prisoners, Courts of Circuit</i> ...		<i>Repealed by Act 18 of 1862.</i>
1818	7	... <i>Foreign Trade</i>		<i>Repealed by Ben. Reg. 2 of 1830.</i>
1818	8	... <i>Security for good behaviour</i> ...		<i>Repealed by Act 17 of 1862.</i>
1818	9	... <i>Settlement, Conquered Provinces</i> ...		<i>Repealed by Act 8 of 1868.</i>
1818	10	... <i>Collection of Revenue, Cuttack</i> ...		<i>Repealed by Act 11 of 1859.</i>
1818	11	... <i>Modifying Ben. Reg. 13 of 1816</i> ...		<i>Repealed by Act 21 of 1856.</i>

CHRONOLOGICAL TABLE OF ENACTMENTS. xxxix

Year.	No.	Short title.	Page.	Remarks.
1	2	3	4	5
I.—Bengal Regulations—(Contd.)				
1818	12	... <i>House-breaking</i> ...		<i>Repealed by Act 17 of 1862.</i>
1818	13	... <i>Settlement, Cuttack</i> ...		<i>Repealed by Act 8 of 1868.</i>
1818	14	... <i>Calcutta Sikka rupees and Gold mohur</i>		<i>Repealed by Act 23 of 1870.</i>
1819	1	... <i>The Bengal Kanungos and Patwaris Regulation.</i>	157	
1819	2	... <i>The Bengal Land-Revenue Assessment (Resumed Lands) Regulation, 1819.</i>	161	
1819	3	... <i>Security from robbers</i> ...		<i>Repealed by Act 17 of 1862.</i>
1819	4	... <i>Revenue Board</i> ...		<i>Repealed by Act 44 of 1850.</i>
1819	5	... <i>Mint</i> ...		<i>Repealed by Act 23 of 1870.</i>
1819	6	... <i>Fernes : Police</i> ...		<i>Repealed (except in Bengal and Eastern Bengal) by Act 17 of 1878.</i> <i>Repealed (in Bengal and Eastern Bengal) by Ben. Act 1 of 1885.</i>
1819	7	... <i>Abduction</i> ...		<i>Repealed by Act 17 of 1862.</i>
1819	8	... <i>The Bengal Patni Taluks Regulation, 1819.</i>	177	
1819	9	... <i>Special Appeals, etc.</i> ...		<i>Repealed by Act 10 of 1861.</i>
1819	10	... <i>Salt</i> ...		<i>Repealed by Act 8 of 1873.</i>
1819	11	... <i>Silver coinage</i> ...		<i>Repealed by Act 8 of 1868.</i>
1820	1	... <i>The Bengal Patni Taluks Regulation, 1820.</i>	199	

Year.	No.	Short title.	Page.	Remarks.
1	2	3	4	5
I.—Bengal Regulations —(Contd.)				
1820	2	... <i>Offences in Chandernagore and Chinsura.</i>		<i>Repealed by Act 16 of 1874.</i>
1820	3	... <i>Pressing coolies</i> ...		<i>Repealed by Act 29 of 1871.</i>
1820	4	... <i>Execution of certain military sentences.</i>		<i>Repealed by Act 17 of 1862.</i>
1820	5	... <i>Duty on tobacco</i> ...		
1820	6	... <i>Repealing part of Ben. Reg. 45 of 1803.</i>		<i>Repealed by Act 8 of 1868.</i>
1820	7	... <i>Dharna</i> ...		<i>Repealed by Act 17 of 1862.</i>
1821	1	... <i>Special Commission, Ceded and Conquered Provinces.</i>		<i>Repealed by Act 8 of 1868.</i>
1821	2	... <i>Civil Procedure</i> ...		<i>Repealed by Act 10 of 1861.</i>
1821	3	... <i>Criminal jurisdiction: Chaukidars</i>		<i>Repealed by Act 17 of 1862.</i>
1821	4	... <i>The Bengal Land-revenue (Assistant Collectors) Regulation, 1821.</i>	201	
1821	5	... <i>Rupces</i> ...		<i>Repealed by Act 8 of 1868.</i>
1822	1	... <i>Amending Ben. Reg. 49 of 1793, etc.</i>		<i>Repealed by Act 17 of 1862.</i>
1822	2	... <i>Customs officers</i> ...		<i>Repealed by Act 29 of 1871.</i>
1822	3	... <i>The Bengal Board of Revenue Regulation, 1822.</i>		<i>Repealed (in Bengal Presidency) by Ben. Act 2 of 1913.</i> <i>Repealed (in B. & O.) by B. & O. Act 1 of 1913.</i> <i>Repealed (in Agra, except certain areas) by Act 19 of 1873.</i> <i>Repealed (in Assam) by Reg. 1 of 1886.</i>
1822	4	... <i>Criminal Procedure</i> ...		<i>Repealed by Act 17 of 1862.</i>

CHRONOLOGICAL TABLE OF ENACTMENTS. xli

Year.	No.	Short title.	Page.	Remarks.
1	2	3	4	5
I.—Bengal Regulations—(Contd.)				
1822	5	Amending Ben. Reg. 9 of 1808		Repealed by Act 8 of 1868.
1822	6	Court of Wards		Repealed in former Province of Bengal by Ben. Act 4 of 1870. Repealed in Agra (except certain areas) by Act 19 of 1873. Repealed in the C. P. and the Sumbalpur District by Act 17 of 1885.
1822	7	The Bengal Land-revenue Settlement Regulation, 1822.	205	
1822	8	Criminal Procedure: Venue		Repealed by Act 17 of 1862.
1822	9	Aliens		Repealed by Act 1 of 1849.
1822	10	Garó Hillmen		Repealed by Act 22 of 1869.
1822	11	The Bengal Government Indemnity Regulation, 1822.	241	
1823	1	Amending Ben. Reg. 1 of 1821		Repealed by Act 8 of 1868.
1823	2	Suppression of affrays		Repealed by Act 17 of 1862.
1823	3	Printing Presses		Repealed by Act 11 of 1825.
1823	4	Criminal Procedure		Repealed by Act 17 of 1862.
1823	5	Customs		Repealed by Act 8 of 1868.
1823	6	The Bengal Indigo Contracts Regulation, 1823.	243	
1823	7	The Indian Civil Service (Bengal), Loans Prohibition Regulation, 1823.	249	
1824	1	Acquisition of land for public purposes.		
1824	2	Farakhabad rupee		Repealed by Act 6 of 1868.

Year.	No.	Short title.	Page.	Remarks.
1	2	3	4	5
I.—Bengal Regulations (Contd.)				
1824	3	... <i>Jurisdiction of Registrar</i> ...		<i>Repealed by Act 10 of 1861.</i>
1824	4	... <i>Registrar of Deeds</i> ...		<i>Repealed by Act 16 of 1864.</i>
1824	5	... <i>Extending Ben. Reg. 6 of 1823</i> ...		<i>Repealed by Act 15 of 1874.</i>
1824	6	... <i>Criminal Procedure</i> ...		<i>Repealed by Act 17 of 1862.</i>
1824	7	... <i>Manufacture and sale of opium</i> ...		<i>Repealed by Act 21 of 1856 and Act 13 of 1857.</i>
1824	8	... <i>River-tolls, Bengal</i> ...		<i>Repealed by Act 12 of 1873.</i>
1824	9	... <i>Settlement, Conquered Provinces and Bundelkhand.</i>		<i>Repealed in part by Act 8 of 1868. Residue repealed (except in certain areas) by Act 19 of 1873. Not printed.</i>
1824	10	... <i>Pardon of accomplices</i> ...		<i>Repealed by Act 17 of 1862.</i>
1824	11	... <i>Local investigations</i> ...		<i>Repealed by Act 29 of 1871.</i>
1824	12	... <i>Penalty on revenue-defaulters</i> ...		<i>Repealed by Ben. Reg. 7 of 1830.</i>
1824	13	... <i>Sadr Amins</i> ...		<i>Repealed by Act 10 of 1861.</i>
1824	14	... <i>Summary rent-suits</i> ...		<i>Repealed by Act 10 of 1859.</i>
1824	15	... <i>Forcible dispossession</i> ...		<i>Repealed by Act 4 of 1840.</i>
1824	16	... <i>Stamp-duties</i> ...		<i>Repealed by Ben. Reg. 10 of 1829.</i>
1825	1	... <i>Criminal Procedure</i> ...		<i>Repealed by Act 17 of 1862.</i>

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Year.	No.	Short title.	Page.	Remarks.
1	2	3	4	5
I.—Bengal Regulations—(Contd.)				
1825	2	... <i>Reviews and Special Appeals</i>		<i>Repealed by Act 10 of 1866.</i>
1825	3	... <i>Sentences of Courts of Circuit</i>		<i>Repealed by Ben. Reg. 16 of 1825.</i>
1825	4	... <i>Security for keeping the peace and for good behaviour.</i>		<i>Repealed by Act 17 of 1862.</i>
1825	5	... <i>Union of powers of Judge and Collectors.</i>		<i>Repealed by Act 8 of 1868.</i>
1825	6	... <i>The Bengal Troops Transport Regulation, 1825.</i>		<i>This Regulation is now obsolete and repealed by Act 36 of 1957.</i>
1825	7	... <i>Execution of decrees</i> ...		<i>Repealed by Act 16 of 1874.</i>
1825	8	... <i>Native Officers : False charges.</i>		<i>Repealed by Act 29 of 1871.</i>
1825	9	... <i>The Bengal Land-revenue Settlement Regulation, 1825.</i>	253	
1825	10	... <i>Commercial Residents</i> ...		<i>Repealed by Act 8 of 1868.</i>
1825	11	... <i>The Bengal Alluvion and Diluvion Regulation, 1825.</i>	263	
1825	12	... <i>Criminal Procedure</i> ...		<i>Repealed by Act 17 of 1862.</i>
1825	13	... <i>The Bengal Land-revenue Settlement (Resumed Kanungoes and Revenue-free Lands) Regulation, 1825.</i>	267	
1825	14	... <i>The Bengal Revenue-free Lands Regulation, 1825.</i>	271	
1825	15	... <i>Customs-duties and drawbacks</i>		<i>Repealed by Act 16 of 1874.</i>
1825	16	... <i>Sentences by Courts of Circuit</i>		<i>Repealed by Act 17 of 1862.</i>

Year.	No.	Short title.	Page.	Remarks.
1	2	3	4	5
1.—Bengal Regulations—(Contd.)				
1825	17	... Gorakpur Zila ...		<i>Repealed by Ben. Reg. 1 of 1829.</i>
1825	18	... Chinsurah ...		<i>Repealed by Act 12 of 1876.</i>
1825	19	... Nazim of Bengal ...		<i>Repealed by Act 27 of 1854.</i>
1825	20	... Courts-Martial and Military Courts of Requests.		<i>Repealed by Act 10 of 1882.</i>
1825	21	... Dera Dun ...		<i>Repealed by Act 15 of 1874.</i>
1826	1	... Provincial Courts of Appeal		} <i>Repealed by Act 8 of 1868.</i>
1826	2	... Settlement, Ceded Provinces		
1826	3	... Prisoners in Civil Jails ...		<i>Repealed (in former Province of Bengal) by Ben. Act 2 of 1864.</i> <i>Repealed (elsewhere) by Act 26 of 1870.</i>
1826	4	... Special Commissions ...		<i>Repealed by Act 8 of 1868.</i>
1826	5	... Pargana of Gobardhan ...		} <i>Repealed by Act 15 of 1874.</i>
1826	6	... Fathipur Zila ...		
1826	7	... Benares Mint ...		<i>Repealed by Act 8 of 1868.</i>
1826	8	... Contraband Opium ...		<i>Repealed by Act 21 of 1856.</i>
1826	9	... Board of Customs ...		<i>Repealed by Act 29 of 1871.</i>

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Year.	No.	Short title.	Page.	Remarks.
1	2	3	4	5
I.—Bengal Regulations —(Contd.)				
1826	10	... <i>Salt</i>		<i>Repealed (in former Province of Bengal) by Ben. Act 7 of 1864.</i>
				<i>Repealed (elsewhere) by Act 8 of 1875.</i>
1826	11	... <i>Native Law-officers</i>		<i>Repealed by Act 11 of 1864.</i>
1826	12	... <i>Stamps, Calcutta</i>		<i>Repealed by Act 36 of 1860.</i>
1827	1	... <i>Criminal Law, Bahgalpur</i>		<i>Repealed by Act 29 of 1871.</i>
1827	2	... <i>Criminals trials, Bareli</i>		<i>Repealed by Act 8 of 1868.</i>
1827	3	... <i>The Bengal Corruption and Extor- tion Regulation, 1827.</i>	279	
1827	4	... <i>Sadr Amins</i>		<i>Repealed by Act 10 of 1861.</i>
1827	5	... <i>The Bengal Attached Estates Management Regulation, 1827.</i>	281	
1828	1	... <i>Commutation of sentences of cer- tain convicts.</i>		<i>Repealed by Act 17 of 1862.</i>
1828	2	... <i>Rescinding parts of Ben. Reg. 1 of 1799.</i>		<i>Repealed by Act 8 of 1868.</i>
1828	3	... <i>The Bengal Land-revenue Assess- ment (Resumed Lands) Regula- tion, 1828.</i>	283	
1828	4	... <i>The Bengal Land-Revenue Settlement Regulation, 1828.</i>	289	
1828	5	... <i>Awards of Military Courts</i>		<i>Repealed by Act 11 of 1841.</i>
1828	6	... <i>Explaining Ben. Reg. 2 of 1823</i>		<i>Repealed by Act 17 of 1862.</i>

xlii **CHRONOLOGICAL TABLE OF ENACTMENTS.**

Ycar.	No.	Short title.	Page.	Remarks.
1	2	3	4	5
I.—Bengal Regulations —(Contd.)				
1828	7	... The Benares Family Domains Regulation, 1828.		Not printed.
1828	8	... <i>Magistrate's powers</i> ...		<i>Repealed by Act 17 of 1862.</i>
1828	9	... <i>Pauper-appeals</i> ...		<i>Repealed by Act 29 of 1871.</i>
1829	1	... The Bengal Revenue Commissioners Regulation, 1829.	291	
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1829	3	... <i>Sadr Diwani and Nizamat Adalat</i>		<i>Repealed by Act 29 of 1871.</i>
1829	4	... <i>Appeals under Ben. Reg. 3 of 1828</i>		<i>Repealed by Act 12 of 1876.</i>
1829	5	... <i>Repealing part of Ben. Regs. 10 of 1817 and 21 of 1825.</i>		<i>Repealed by Act 15 of 1874.</i>
1829	6	... <i>Powers of Magistrates</i> ...		} <i>Repealed by Act 17 of 1862.</i>
1829	7	... <i>Statements by civil and criminal authorities.</i>		
1829	8	... <i>Amending Ben. Regs. 5 of 1809 and 1 of 1822.</i>		<i>Repealed by Act 1 of 1849.</i>
1829	9	... <i>Commercial Agents</i> ...		<i>Repealed by Act 8 of 1862.</i>
1829	10	... <i>Stamps</i> ...		<i>Repealed by Act 36 of 1860.</i>
1829	11	... <i>Embankments</i> ...		<i>Repealed (in former Province of Bengal) by Act 32 of 1855.</i> <i>Repealed (in Agra, except certain areas) by Act 19 of 1873.</i> <i>Repealed (elsewhere) by Act 12 of 1876.</i>

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Year.	No.	Short title.	Page.	Remarks.
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I.—Bengal Regulations —(Contd.)

1829	12	... <i>Modifying Ben. Reg. 12 of 1825</i>		<i>Repealed by Act 17 of 1862.</i>
1829	13	... <i>Legal Remembrancer</i> ...		<i>Repealed by Act 8 of 1868.</i>
1829	14	... <i>Security from Foreign litigants</i>		<i>Repealed by Act 10 of 1861.</i>
1829	15	... <i>Assessment of Customs duties</i>		<i>Repealed by Act 16 of 1874.</i>
1829	16	... <i>Salt-duty</i> ...		<i>Repealed by Act 14 of 1843.</i>
1829	17	... <i>The Bengal Sati Regulation, 1829</i>	295	
1829	18	... <i>Repealing Ben. Reg. 4 of 1829, s. 3</i>		} <i>Repealed by Act 8 of 1868.</i>
1830	1	... <i>Repealing part of Ben. Reg. 1 of 1829.</i>		
1830	2	... <i>Foreign Trade</i> ...		<i>Repealed by Act 29 of 1871.</i>
1830	3	... <i>Customs-duties</i> ...		<i>Repealed by Act 16 of 1874.</i>
1830	4	... <i>Explaining Ben. Reg. 1 of 1829, s. 3</i>		<i>Repealed by Act 17 of 1862.</i>
1830	5	... <i>The Bengal Indigo Contracts Regulation, 1830.</i>	299	
1830	6	... <i>Subsistence-allowance of debtors</i>		<i>Repealed by Act 10 of 1861.</i>
1830	7	... <i>Interest on arrears of revenue</i>		<i>Repealed by Act 12 of 1841.</i>
1830	8	... <i>Inquiries by Magistrates</i>		<i>Repealed by Act 17 of 1862.</i>
1831	1	... <i>Repealing Ben. Reg. 16 of 1825, s. 3, cl. 2.</i>		<i>Repealed by Act 8 of 1868.</i>

xlviii CHRONOLOGICAL TABLE OF ENACTMENTS.

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1831	2	Legalising certain trials ...		} Repealed by Act 8 of 1868.
1831	3	Copper coinage ...		
1831	4	Amending Straits Regulation 5 of 1830.		Repealed by Act 14 of 1851.
1831	5	Munsifs and Sadr Amins and Principal Sadr Amins.		Repealed by Act 16 of 1868.
1831	6	Appellate Judges at Allahabad		Repealed by Act 12 of 1891.
1831	7	Jail deliveries ...		Repealed by Act 3 of 1868.
1831	8	Summary suits for arrears of rent		Repealed by Act 10 of 1859.
1831	9	Sadr Diwani and Nizamat Adalat		Repealed by Act 8 of 1868.
1831	10	Revenue Board, Agra ...		Repealed (except in certain areas) by Act 19 of 1873. Not printed.
1831	11	Police-powers of Tasildars		Not printed.
1832	1	Raji Rau's Jagir ...		Repealed by Act 9 of 1852.
1832	2	Criminal Procedure ...		} Repealed by Act 8 of 1869.
1832	3	Slavery ...		
1832	4	Explaining Ben. Reg. 10 of 1819, s. 41.		Repealed by Act 8 of 1875.
1832	5	Delhi territory ...		Repealed by Act 12 of 1876.
1832	6	Native Assessors ...		Repealed by Act 16 of 1874.

CHRONOLOGICAL TABLE OF ENACTMENTS.

Year.	No.	Short title.	Page.	Remarks.
1	2	3	4	5
I.—Bengal Regulations —(Contd.)				
1832	7	... <i>Modifying Ben. Reg. 5 of 1831</i>		<i>Repealed by Act 6 of 1871.</i>
1832	3	... <i>Repealing Ben. Reg. 14 of 1814</i>		<i>Repealed by Act 15 of 1874.</i>
1833	1	... <i>Board of Revenue, Allahabad</i>		<i>Repealed by Act 8 of 1875.</i>
1833	2	... <i>Provincial Courts of Appeal</i>		<i>Repealed by Act 8 of 1868.</i>
1833	3	... <i>Registry of Imports and Exports, Straits Settlements.</i>		<i>Repealed (in part) by Act 22 of 1855.</i> <i>Not printed.</i>
1833	4	... <i>Convicts Labourers</i> ...		<i>Repealed by Act 1 of 1903.</i>
1833	5	... <i>District of Dacca</i> ...		<i>Repealed by Act 15 of 1874.</i>
1833	6	... <i>Customs duties</i> ...		<i>Repealed by Act 16 of 1874.</i>
1833	7	... <i>Rupees : Unit of weight</i> ...		<i>Repealed by Act 8 of 1868.</i>
1833	8	... <i>Additional Judges</i> ...		<i>Repealed by Act 6 of 1871.</i>
1833	9	... <i>The Bengal Land-revenue (Settlement and Deputy Collectors) Regulation, 1833.</i>	301	
1833	10	... <i>Sale of Spirits of European Manufacture (Straits).</i>		<i>Repealed by Act 14 of 1851.</i>
1833	11	... <i>Pawnbrokers' shops (Straits)</i>		<i>Repealed by Act 40 of 1850.</i>
1833	12	... <i>Pleaders</i> ...		<i>Repealed by Act 1 of 1846.</i>
1833	13	... <i>Zilās of Ramgar, Jungle Mahals and Midnapore.</i>		<i>Repealed by Act 12 of 1876.</i>

CHRONOLOGICAL TABLE OF ENACTMENTS.

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1	2	3	4	5
I.—Bengal Regulations. —(Concl'd.)				
1834	1	Town-duties, Calcutta ...		Repealed by Act 8 of 1868.
1834	2	Abolition of Corporal punishment		Repealed (in part) by Act 17 of 1862. Residue repealed (in former Province of Bengal) by Ben. Act 2 of 1864. Residue repealed (elsewhere) by Act 26 of 1870.
II.—Local Acts of the Governor General of India in Council, Local Acts of the Indian Legislature and Central Acts as modified in their application to West Bengal.				
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1853	VI	The Rent Recovery Act, 1853 ...	317	
1856	XVIII	The Calcutta Land-revenue Act, 1856.	321	
1857	XXI	The Howrah Offences Act, 1857	323	
1858	XXXI	The Bengal Alluvial Land Settlement Act, 1858.	333	
1859	V	The Bengal Ghatwali Lands Act, 1859.	335	
1859	X	The Bengal Rent Act, 1859	337	
1859	XI	The Bengal Land-revenue Sales Act, 1859.	383	
1867	XIX	The Darjeeling (High Court's jurisdiction) Act, 1867.	403	

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1871	IV	...	The Coroners Act, 1871	463
1878	I	...	The Opium Act, 1878	475
1879	XIX	...	The Raipur and Khattra Laws Act, 1879.	491
1882	XV	...	The Presidency Small Cause Courts Act, 1882.	493
1885	XV	...	The Bengal Tenancy Act, 1885	533
1887	VII ^{XI}	...	The Bengal, Agra and Assam Civil Courts Act, 1887.	701
1894	XII	...	The Land Acquisition Act, 1894	713
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1908	II	...	The Explosive Substances Act, 1908	857
1909	VI	...	The Presidency-towns Insolvency Act, 1909.	861
1910	III	...	The Calcutta High Court (Jurisdictional Limits) Act, 1919.	923

III.—Local Act made by the Governor General under section 67B of the Government of India Act, in force in West Bengal.

1925	*	The Bengal Criminal Law Amendment (Supplementary) Act, 1925.	929
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*No number was given to this Act.

CHRONOLOGICAL TABLE OF ENACTMENTS.

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IV.—Regulations made under the Government of India Act, 1870, and the Government of India Act, 1935, in force in West Bengal,

1873	V	...	Bengal Eastern Frontier Regulation, 1873.	931	
1937	I	...	<i>The Chittagong Hill-tracts (Amendment) Regulation, 1937.</i>		<i>Repealed by Ben. Act XVI of 1946.</i>
1937	II	...	The Chittagong Hill-tracts Laws Regulation, 1937.		Not printed.
1937	III	...	The Chittagong Hill-tracts Laws (No. II) Regulation, 1937.		Not printed.
1938	I	...	The Chittagong Hill-tracts Loans Regulation, 1938.		Not printed.
1939	I	...	<i>The Chittagong Hill-tracts (Amendment) Regulation, 1939.</i>		<i>Repealed by Ben. Act XVI of 1946.</i>
1939	II	...	The Mymensingh (Partially Excluded Areas) Banais Regulation, 1939.		Not printed.
1939	III	...	The Chittagong Hill-tracts Laws Regulation, 1939.		Not printed.
1940	I	...	The Chittagong Hill-tracts Laws Regulation, 1940.		Not printed.
1940	II	...	The Chittagong Hill-tracts Laws (No. II) Regulation, 1940.		Not printed.
1940	III	...	The Mymensingh Partially Excluded Areas Tenancy Regulation, 1940		Not printed.

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1	2	3	4	5

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1941	I	... The Mymensingh Partially Excluded Areas Tenancy (Amendment) Regulation, 1941.		Not printed.
1941	II	... The Chittagong Hill-tracts Laws Regulation, 1941.		Not printed.
1941	III	... The Mymensingh Partially Excluded Areas (Second Amendment) Regulation, 1941.		Not printed.
1942	I	... The Chittagong Hill-tracts Laws Regulation, 1942.		Not printed.
1942	II	... The Chittagong Hill-tracts (Amendment) Regulation, 1942.		Not printed.
1942	III	... The Chittagong Hill-tracts Laws (No. II) Regulation, 1942.		Not printed.
1942	IV	... The Chittagong Hill-tracts Laws (No. III) Regulation, 1942.		Not printed.
1942	V	... The Chittagong Hill-tracts Laws (No. IV) Regulation, 1942.		Not printed.
1942	VI	... The Chittagong Hill-tracts Laws (No. V) Regulation, 1942.		Not printed.
1942	VII	... The Indian Post Office Act (Bengal Partially Excluded Areas Amendment) Regulation, 1942.	935	
1942	VIII	... The Mymensingh Partially Excluded Areas Tenancy Regulation, 1942.		Not printed.

CHRONOLOGICAL TABLE OF ENACTMENTS.

Year.	No.	Short title.	Page.	Remarks.
1	2	3	4	5

IV.—Regulations made under the Government of India Act, 1870, and the Government of India Act, 1935, in force in West Bengal—(Contd.)

1943	I	... The Chittagong Hill-tracts Laws Regulation, 1943.		Not printed.
1943	II	... The Chittagong Hill-tracts Laws (No. II) Regulation, 1943.		Not printed.
1943	III	... The Chittagong Hill-tracts Laws (No. III) Regulation, 1943.		Not printed.
1943	IV	... The Chittagong Hill-tracts Laws (No. IV) Regulation, 1943.		Not printed.
1943	V	... The Mymensingh Partially Excluded Areas Tenancy (Amendment) Regulation, 1943.		Not printed.
1943	VI	... The Chittagong Hill-tracts Laws (No. V) Regulation, 1943.		Not printed.
1943	VII	... <i>The Bengal Municipal Act (Darjeeling District Amendment) Regulation, 1943.</i>		<i>Repealed by West Ben. Act VII of 1948.</i>
1944	I	... The Chittagong Hill-tracts Laws Regulation, 1944.		Not printed.
1944	II	... The Central Excise and Salt Act and the Indian Finance Act (Chittagong Hill-tracts) Regulation, 1944.		Not printed.
1944	III	... The Chittagong Hill-tracts Laws (No. II) Regulation, 1944.		Not printed.
1945	I	... The Chittagong Hill-tracts (Amendment) Regulation, 1943.		Not printed.

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Year.	No.	Short title.	Page.	Remarks.
1	2	3	4	5
IV.—Regulations made under the Government of India Act, 1870, and the Government of India Act, 1935, in force in West Bengal —(Concl'd.)				
1945	II	... The Mymensingh Partially Excluded Areas Tenancy (Amendment) Regulation, 1945.		Not printed.
1945	III	... The Women's Auxiliary Corps Ordinance (Bengal Partially Excluded Areas) Regulation, 1945.		Spent.
1945	IV	... The Bengal Rent (Darjeeling District Amendment) Regulation, 1945.	937	
1946	I	... The Chittagong Hill-tracts Laws Regulation, 1946.		Not printed.
1948	I	... The Indian Tea Control (Amendment) Darjeeling District Regulation, 1948.	939	

THE WEST BENGAL CODE

Volume I

PART I—BENGAL REGULATIONS.

Bengal Regulation I of 1793

(The Bengal Permanent Settlement Regulation, 1793.)

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Bengal Regulation I of 1793

(The Bengal Permanent Settlement Regulation, 1793.)¹

SHORT TITLE GIVEN	Act V of 1897.
REPEALED IN PART	Act. IV of 1846.
SUPPLEMENTED . .	Ben. Regg. I of 1801.
	(a) The Government of India (Adaptation of Indian Laws) Order, 1937.
ADAPTED . .	(b) The Adaptation of Laws Order, 1950.

(1st May, 1793.)

A Regulation for enacting into a Regulation certain Articles of a Proclamation bearing date the 22nd March, 1793.

1. The following articles of the Proclamation relative to the limitation of the public demand upon the lands, addressed by the Governor General in Council to the *zamindars*, independent *talukdars* and other actual proprietors of land paying revenue to Government, in the Provinces of Bengal, [*Bihar and Orissa*,] are hereby enacted into a Regulation, which is to have force and effect from the 22nd March, 1793, the date of the Proclamation.

Preamble.

Proclamation.

2. *Article I.*—In the original Regulations for the decennial settlement of the public revenues of Bengal, [*Bihar and Orissa*] passed for those Provinces, respectively, on the 18th September, 1789, [*the 25th November, 1789, and the 10th February, 1790*,] it was notified to the proprietors of land, with or on behalf of whom a settlement might be concluded, that the *jama*

Decennial settlement declared conditionally permanent by original Regulations.

¹ Short title.—This short title was given by the Amending Act, 1897 (V of 1897).

Local Extent.—This Regulation was passed for the whole of the former Province of Bengal—see secs. 1 to 3.

It has been declared by the Laws Local Extent Act, 1874 (XV of 1874), section 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by the notification under the Schedule Districts Act, 1874 (XIV of 1874), section 3, to be in force in West Jalpaiguri in the district of Jalpaiguri.

As respects anything done or to be done after the commencement of the Constitution of India, references to the Governor-General shall be construed as references to the State Government except that, as respects that period, references to the making or adaptation of Regulations by the Governor-General in Council or the British Administrations shall be construed as references to the passing of the Acts of the State Legislature. (See the Sixth Schedule to the Adaptation of Laws Order, 1950.)

(Secs. 3—5.)

assessed upon their lands under those Regulations would be continued after the expiration of the ten years, and remain unalterable for ever, provided such continuance should meet with the approbation of the Honourable Court of Directors for the affairs of the East India Company, and not otherwise.

Power to
declare
jama
assessed
upon lands
under
those
Regula-
tions,
fixed for
ever.

3. Article II.—The Marquis Cornwallis, Knight of the Most Noble Order of the Garter, Governor General in Council, now notifies to all *zamindars*, independent *talukdars* and other actual proprietors of land paying revenue to Government, in the provinces of Bengal, [Bihar and Orissa,] that he has been empowered by the Honourable Court of Directors for the affairs of the East India Company to declare the *jama*, which has been or may be assessed upon their lands under the Regulations above-mentioned, fixed for ever.

Jama
assessed
upon lands
of
proprietors
with
whom
settlement
concluded,
fixed for
ever.

4. Article III.—The Governor General in Council¹ accordingly declares to the *zamindars*, independent *talukdars* and other actual proprietors of land with or on behalf of whom a settlement has been concluded under the Regulations above-mentioned, that at the expiration of the term of the settlement no alteration will be made in the assessment which they have respectively engaged to pay, but that they and their heirs and lawful successors will be allowed to hold their estates at such assessment for ever.

Jama
hereafter
agreed
to by
proprietors
whose
lands are
held *Khas*,
or let in
farm, fixed
for ever.

5. Article IV.—The lands of some *zamindars*, independent *talukdars* and other actual proprietors of land, having been held *khas*, or let in farm, in consequence of their refusing to pay the assessment required of them under the Regulations above-mentioned, the Governor General in Council¹ now notifies to the *zamindars*, independent *talukdars* and other actual proprietors of land whose lands are held *khas* that they shall be restored to the management of their lands, upon their agreeing to the payment of the assessment which has been or may be required of them, in conformity to the Regulations above-mentioned, and that no alteration shall afterwards be made in that assessment but that they, and their heirs and lawful successors, shall be permitted to hold their respective estates at such assessment for ever :

¹ See the last paragraph of foot-note 1 on page 3, ante.

of 1793.]

(Secs. 6, 7.)

and he declares to the *zamindars*, independent *talukdars* and other actual proprietors of land, whose lands have been let in farm, that they shall not regain possession of their lands before the expiration of the period for which they have been farmed (unless the farmers shall voluntarily consent to make over to them the remaining term of their lease, and the Governor General in Council¹ shall approve of the transfer), but that at the expiration of that period, upon their agreeing to the payment of the assessment which may be required of them, they shall be reinstated, and that no alteration shall afterwards be made in that assessment, but that they, and their heirs and lawful successors, shall be allowed to hold their respective estates at such assessment for ever.

6. Article V.—In the event of the proprietary right in lands that are, or may become, the property of Government being transferred to individuals, such individuals, and their heirs and lawful successors, shall be permitted to hold the lands at the assessment at which they may be transferred for ever.

Jama of lands belonging to Government, but transferred to individuals, fixed for ever.

7. Article VI.—It is well known to the *zamindars*, independent *talukdars* and other actual proprietors of land, as well as to the inhabitants of Bengal, [*Bihar and Orissa*], in general, that from the earliest times until the present period the public assessment upon the land has never been fixed, but that, according to established usage and custom, the rulers of these provinces have from time to time demanded an increase of assessment from the proprietors of land; and that, for the purpose of obtaining this increase, not only frequent investigations have been made to ascertain the actual produce of their estates, but that it has been the practice to deprive them of the management of their lands, and either to let them in farm, or to appoint officers on the part of Government to collect the assessment immediately from the *raiyats*.

Assessment in former times liable to variation at discretion of Government.

The Honourable Court of Directors, considering these usages and measures to be detrimental to the prosperity of the country, have, with a view to promote the future ease and

Motives of Court of Directors for abolishing usage and fixing assessment.

¹ See the last paragraph of foot-note 1 on page 3, *ante*.

[Ben. Reg. 1]

(Sec. 7.)

happiness of the people, authorized the foregoing declarations ; and the *zamindars*, independent *talukdars* and other actual proprietors of land, with or on behalf of whom a settlement has been or may be concluded, are to consider these orders fixing the amount of the assessment as irrevocable, and not liable to alteration by any persons whom the Court of Directors may hereafter appoint to the administration of their affairs in this country.

Proprietors expected to improve estates.

The Governor General in Council¹ trusts that the proprietors of land, sensible of the benefits conferred upon them by the public assessment being fixed for ever, will exert themselves in the cultivation of their lands, under the certainty that they will enjoy exclusively the fruits of their own good management and industry, and that no demand will ever be made upon them, or their heirs or successors, by the present or any future Government, for an augmentation of the public assessment in consequence of the improvement of their respective estates.

Conduct to be observed by proprietors towards dependent *talukdars* and *rai-yats*.

To discharge the revenues at the stipulated periods without delay or evasion and to conduct themselves with good faith and moderation towards their dependent *talukdars* and *rai-yats*, are duties at all times indispensably required from the proprietors of land, and a strict observance of those duties is now more than ever incumbent upon them, in return for the benefits which they will themselves derive from the orders now issued.

The Governor General in council¹ therefore expects that the proprietors of land will not only act in this manner themselves towards their dependent *talukdars* and *rai-yats*, but also enjoin the strictest adherence to the same principles in the persons whom they may appoint to collect the rents from them.

No claims for remissions or suspensions.

He further expects that, without deviating from this line of conduct, they will regularly discharge the revenue in all seasons; and he accordingly notifies to them, that, in future, no claims or application for suspensions or remissions, on account of drought, inundation or other calamity of seasons, will be attended to, but that in the event of any *zamindar*,

¹See the last paragraph of foot-note 1 on page 3, ante.

of 1793.

(Sec. 8.)

independent *talukdar* or other actual proprietor of land, with or on behalf of whom a settlement has been or may be concluded, or his or her heirs or successors, failing in the punctual discharge of the public revenue which has been or may be assessed upon their lands under the above-mentioned Regulations, a sale of the whole of the lands of the defaulter, or such portion of them as may be sufficient to make good the arrear, will positively and invariably take place.

Sale of
lands for
arrears.

8. *Article VII.*—To prevent any misconstruction of the foregoing articles the Governor General in Council¹ thinks it necessary to make the following declarations to the *zamindars*, independent *talukdars* and other actual proprietors of land :—

First.—It being the duty of the ruling power to protect all classes of people and more particularly those who from their situation are most helpless, the Governor General in Council¹ will, whenever he may deem it proper, enact such Regulations as he may think necessary for the protection and welfare of the dependent *talukdars*, *rai-yats* and other cultivators of the soil; and no *zamindar*, independent *talukdar* or other actual proprietor of land shall be entitled on this account to make any objection to the discharge of the fixed assessment which they have respectively agreed to pay.

Regula-
tions for
protection
of *rai-yats*,
etc.

Second.—The Governor General in Council¹ having, on the 28th July, 1790, directed the *sair* collections to be abolished, a full compensation was granted to the proprietors of land for the loss of revenue sustained by them in consequence of this abolition; and he now declares that, if he should hereafter think it proper to re-establish the *sair* collections or any other internal duties, and to appoint officers on the part of Government to collect them, no proprietor of land will be admitted to any participation thereof, or be entitled to make any claims for remissions of assessment on that account.

Right of
Govern-
ment to all
internal
duties.

Third.—The Governor General in Council¹ will impose such assessment as he may deem equitable on all lands at present alienated and paying no public revenue which have been or may be proved to be held under illegal or invalid titles.

and to
jama on
alienated
lands.

¹ See the last paragraph of foot-note 1 on page 3, ante.

(Sec. 8.)

The assessment so imposed will belong to Government and no proprietor of land will be entitled to any part of it.

Resump-
tion of
police al-
lowances
to pro-
prieters.

Fourth.—The *jama* of those *zamindars*, independent *talukdars* and other actual proprietors of land, which is declared fixed in the foregoing articles, is to be considered entirely unconnected with, and exclusive of, any allowances which have been made to them in the adjustment of their *jama*, for keeping up *thanas* or police establishments, and also of the produce of any lands which they may have been permitted to appropriate for the same purpose, and the Governor General in Council¹ reserves to himself the option of resuming the whole or part of such allowances, or produce of such lands, according as he may think proper in consequence of his having exonerated the proprietors of land from the charge of keeping the peace, and appointed officers on the part of Government to superintend the police of the country.

The Governor General in Council¹, however, declares that the allowances or produce of lands which may be resumed will be appropriated to no other purpose but that of defraying the expense of the police; and that instructions will be sent to the Collectors not to add such allowances, or the produce of such lands, to the *jama* of the proprietors of land, but to collect the amount from them separately.

Estates of
disquali-
fied pro-
prieters
not liable
to sale for
arrears.

Fifth.—Nothing contained in this proclamation shall be construed to render the lands of the several descriptions of disqualified proprietors, specified in the first Article of the Regulations regarding disqualified landholders, passed on the 15th July, 1791, liable to sale for any arrears which have accrued or may accrue on the fixed *jama* that has been or may be assessed upon their lands under the above-mentioned Regulations for the decennial settlement: provided that such arrears have accrued or may accrue during the time that they have been or may be dispossessed of the management of their lands under the said Regulations of the 15th July, 1791.

It is to be understood, however, that whenever all or any of the descriptions of disqualified landholders, specified in

¹ See the last paragraph of foot-note 1 on page 3, ante.

of 179

(Sec. 9.)

the first Article of the last-mentioned Regulations, shall be permitted to assume or retain the management of their lands, in consequence of the ground of their disqualification no longer existing, or of the Governor General in Council¹ dispensing with, altering or abolishing those Regulations, the lands of such proprietors will be held responsible for the payment of the fixed *jama* that has been or may be assessed thereon, from the time that the management may devolve upon them, in the same manner as the lands of all actual proprietors of land who are declared qualified for the management of their estates, and also of all actual proprietors who are unqualified for such management, by natural or other disabilities, but do not come within the descriptions of disqualified landholders specified in the first Article of the Regulations of the 15th July, 1791, are and will be held answerable, for any arrears that are or may become due from them, on the fixed *jama* which they, or any persons on their behalf, have engaged or may engage to pay, under the above-mentioned Regulations, for the decennial settlement.

9. Article VIII.—That no doubt may be entertained whether proprietors of land are entitled, under the existing Regulations, to dispose of their estates without the previous sanction of Government, the Governor-General in Council¹ notifies to the *zamindars*, independent *talukdars* and other actual proprietors of land that they are privileged to transfer to whomsoever they may think proper, by sale, gift or otherwise, their proprietary rights in the whole or any portion of their respective estates, without applying to Government for its sanction to the transfer, and that all such transfer will be held valid :

Proprietors may transfer lands without sanction of Government.

Provided that they be conformable to the Muhammadan or the Hindu laws (according as the religious persuasions of the parties to each transaction may render the validity of it determinable by the former or the latter Code), and that they be not repugnant to any Regulations now in force, which have been passed by the British administrations, or to any Regulations that they may hereafter enact.

Proviso.

¹ See the last paragraph of foot-note 1 on page 3, ante.

[Ben. Reg. 1

(Sec. 10.)

Rules for apportioning fixed *jama* on portions of estates in event of sale or transfer, and on shares of estates.

10. Article IX.—From the limitation of the public demand upon the lands, the net income, and consequently the value (independent of increase of rent obtainable by improvements), of any landed property, for the assessment on which a distinct engagement has been or may be entered into, between Government and the proprietor, or that may be separately assessed, although included in one engagement with other estates belonging to the same proprietor, and which may be offered for public or private sale entire, will always be ascertainable by a comparison of the amount of the fixed *jama* assessed upon it (which, agreeable to the foregoing declarations, is to remain unalterable for ever, to whomsoever the property may be transferred), with the whole of its produce, allowing for the charges of management.

But it is also essential that a notification should be made of the principles upon which the fixed assessment charged upon any such estate will be apportioned on the several divisions of it, in the event of the whole of it being transferred by public or private sale, or otherwise, in two or more lots or of a portion of it being transferred in one, or in two or more lots, or of its being joint property, and a division of it being made amongst the proprietors; otherwise, from the want of a declared rule for estimating the proportion of the fixed *jama* with which the several shares would be chargeable in such cases, the real value of each share would be uncertain, and consequently the benefits expected to result from fixing the public assessment upon the lands would be but partially obtained.

The Governor General in Council¹ has accordingly prescribed the following rules for apportioning the fixed assessments in the several cases above-mentioned; But as Government might sustain a considerable loss of revenue by disproportionate allotments of the assessment were the apportioning of it, in any of the cases above specified, to be left to the proprietors, he requires that all such transfers or divisions as may be made by the private act of the parties themselves be not-

¹ See the last paragraph of foot-note 1 on page 3, ante.

of 1793.

(Sec. 10.)

fied to the Collector of the revenue of the *zila* in which the lands may be situated, or such other officer as Government may in future prescribe, in order that the fixed *jama*, assessed upon the whole estate, may be apportioned on the several shares in the manner hereafter directed, and that the names of the proprietors of each share and the *jama* charged thereon may be entered upon the public registers, and that separate engagements for the payment of the *jama* assessed upon each share may be executed by the proprietors, who will thenceforward be considered as actual proprietors of land.

Andt he Governor General in Council¹ declares that, if the parties to such transfers or divisions shall omit to notify them to the Collector of the revenue of the *zila* or such other officer as may be hereafter prescribed, for the purposes before-mentioned, the whole of such estate will be held responsible to Government for the discharge of the fixed *jama* assessed upon it, in the same manner as if no such transfer or division had ever taken place.

The Governor General in Council¹ thinks it necessary further to notify, in elucidation of the declarations contained in this Article (which are conformable to the principles of the existing Regulations), that if any *zamindar*, independent *talukdar* or other actual proprietor of land shall dispose of a portion of his or her lands as a dependent *taluk*, the *jama* which may be stipulated to be paid by the dependent *talukdar* will not be entered upon the records of Government, nor will the transfer exempt such lands from being answerable, in common with the remainder of the estate, for the payment of the public revenue assessed upon the whole of it, in the event of the proprietor, or his or her heirs or successors, falling in arrear from any cause whatever, nor will it be allowed, in any case, to affect the rights or claims of Government, any more than if it had never taken place.

First.—In the event of the whole of the lands of a *zamindar*, independent *talukdar* or other actual proprietor of land, with or on behalf of whom a settlement has been or may be conc-

¹See the last paragraph of foot-note 1 on page 3, *ante*.

[Ben. Reg. 1

(Sec. 10.)

luded, under the Regulations above-mentioned, being exposed to public sale by the order of the Governor General in Council¹, for the discharge of arrears of assessment, or in consequence of the decision of a Court of Justice, in two or more lots, the assessment upon each lot shall be fixed at an amount which shall bear the same proportion to its actual produce as the fixed assessment upon the whole of the lands sold may bear to the whole of their actual produce.

This produce shall be ascertained in the mode that is or may be prescribed by the existing Regulations, or such other Regulations as the Governor General in Council¹ may hereafter adopt, and the purchaser or purchasers of such lands, and his or her or their heirs and lawful successors, shall hold them at the *jama* at which they may be so purchased, for ever.

Second.—When a portion of the lands of a *zamindar*, independent *talukdar* or other actual proprietor of land, with or on behalf of whom a settlement has been or may be concluded, under the Regulations before-mentioned, shall be exposed to public sale, by order of the Governor General in Council¹, for the liquidation of arrears of assessment, or pursuant to the decision of a Court of Justice, the assessment upon such lands, if disposed of in one lot, shall be fixed at an amount which shall bear the same proportion to their actual produce as the fixed assessment upon the whole of the lands of such proprietor, including those disposed of, may bear to the whole of their actual produce.

If the lands sold shall be disposed of in two or more lots, the assessment upon each lot shall be fixed at an amount which shall bear the same proportion to its actual produce as the fixed assessment upon the whole of the lands of such proprietor, including those sold, may bear to the whole of their actual produce.

The actual produce of the whole of the lands of such proprietor, whether the portion of them which may be sold be disposed of in one or in two or more lots, shall be ascertained in

¹See the last paragraph of foot-note 1 on page 3, *ante*.

of 1793.]

(Sec. 10.)

the mode that is or may be prescribed by the existing Regulations, or such other Regulations as the Governor General in Council¹ may hereafter enact, and the purchaser or purchasers of such lands, and his or her or their heirs or successors, will be allowed to hold them at the *jama* at which they may be so purchased, for ever : and the remainder of the public *jama*, which will consequently be payable by the former proprietor of the whole estate, on account of the portion of it that may be left in his or her possession, will continue unalterable for ever.

Third.—When a *zamindar*, independent *talukdar* or other actual proprietor of land, with or on behalf of whom a settlement has been or may be concluded, shall transfer the whole of his or her estate, in two or more distinct portions, to two or more persons, or a portion thereof to one person, or to two or more persons in joint property, by private sale, gift or otherwise, the assessment upon each distinct portion of such estate so transferred shall be fixed at an amount which shall bear the same proportion to its actual produce as the assessment upon the whole of the estate of the transferring proprietor, of which the whole or a portion may be so transferred, may bear to the whole of its actual produce.

This produce shall be ascertained in the mode that is or may be prescribed in the existing Regulations, or such other Regulations as Government may hereafter adopt, and the person or persons to whom such lands may be transferred, and his or her or their heirs and lawful successors, shall hold them at the *jama* at which they may be so transferred, for ever : and where only a portion of such estate shall be transferred, the remainder of the public *jama* which will consequently be payable by the former proprietor of the whole estate² on account of the lands that may remain in his or her possession shall be continued unalterable for ever.

¹See the last paragraph of foot-note 1 on page 3, *ante*.

²*Sic.* in Clarke.

[Ben. Reg. 1

(Sec. 11.)

Fourth.—Whenever a division shall be made of lands, the settlement of which has been or may be concluded with or on behalf of the proprietor or proprietors, and that are or may become the joint property of two or more persons, the assessment upon each share shall be fixed at an amount which shall bear the same proportion to its actual produce as the fixed *jama* assessed upon the whole of the estate divided may bear to the whole of its actual produce.

This produce shall be ascertained in the mode that is or may be prescribed by the existing Regulations or such other Regulations as the Governor General in Council¹ may hereafter adopt, and the sharers, and their heirs and lawful successors, shall hold their respective shares at the *jama* which may be so assessed upon them, for ever.

Adjusting
jama of
lands held
khas or let
in farm.

⁹11. *Article X.*—The following rules are prescribed respecting the adjustment of the assessment on the lands of *zamindars*, independent *talukdars* and other actual proprietors of land, whose lands are or may be held *khas* or let in farm in the event of their being disposed of by public sale, or transferred, by any private act of the proprietor, or of their being joint property, and a division of them taking place amongst the proprietors.

First.—If the whole, or a portion of the lands of a *zamindar*, independent *talukdar* or other actual proprietor of land who may not have agreed to the payment of the assessment proposed to him or her under the Regulations above-mentioned, and whose lands are or may be held *khas* or let in farm, shall be exposed to public sale in one or in two or more lots (pursuant to the decree of a Court of Justice), such lands, if *khas*, shall be disposed of at whatever assessment the Governor General in Council¹ may deem equitable, and the purchaser or purchasers of such lands, and his or her or their heirs and lawful successors, shall hold the lands at the assessment at which they may be so purchased, for ever.

¹See the last paragraph of foot-note 1 on page 3, *ante*.

²The application of sec. 11 is extended by sec. 4 of the Bengal Inheritance Regulation, 1793 (XI of 1793).

So much of sec. 11 as relates to the adjustment of the Government *jama* on lands exposed to public sale in satisfaction of decrees was repealed by sec. 1 of Act IV of 1846.

of 1793

(Sec. II.)

If the lands, at the time of their being exposed to sale, shall be held in farm, and shall be put up in one or in two or more lots, they shall be disposed of under the following conditions:—

The purchaser or purchasers shall receive, during the unexpired part of the term of the lease of the farmer, whatever such proprietor shall have been entitled to receive, in virtue of his or her proprietary rights, on account of the land so purchased, and such purchaser or purchasers shall engage to pay, at the expiration of the lease of the farmer, such assessment on account of the lands as Government may deem equitable.

The sum to be received by the purchaser or purchasers during the unexpired part of the term of the lease of the farmer, and the *jama* to be paid by such purchaser or purchasers after the expiration of the lease, shall be specified at the time of the sale, and such purchaser or purchasers, and his or her or their heirs and lawful successors, shall be allowed to hold the lands at the assessment at which they may be so purchased, for ever.

Second.—If a *zamindar*, independent *talukdar* or other actual proprietor of land, whose lands are or may be held *khas* or let in farm, shall transfer by private sale, gift or otherwise, the whole or a portion of his or her lands in one or in two or more lots, the person or persons to whom the lands may be so transferred shall be entitled to receive from Government (if the lands are held *khas*), or from the farmer (if the lands are let in farm), the *malikana* to which the former proprietor was entitled on account of the land so transferred.

Persons to whom such lands may be so transferred will stand in the same predicament as the *zamindars*, independent *talukdars* or other actual proprietors of land mentioned in the fourth Article, whose lands are held *khas*, or have been let in farm, in consequence of their refusing to pay the assessment required of them under the before-mentioned Regulations for the decennial settlement; and the declarations contained in that Article are to be held applicable to them.

(Ben.Reg. 1 of 1793)**(Sec. 11.)**

Third.—In the event of a division being made of lands that are or may become the joint property of two or more persons, and which are or may be held *khas* or let in farm, the proprietors of the several shares will stand in the same predicament, with regard to their respective shares as the *zamindars*, independent *talukdars* and other actual proprietors of land specified in the fourth Article, whose lands have been let in farm or are held *khas* in consequence of their having refused to pay the assessment required of them under the before-mentioned Regulations for the decennial settlement; and the declarations contained in that Article are to be considered applicable to them.

Bengal Regulation 11 of 1793

(The Bengal Land-revenue Regulation, 1793)

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44. (*Repealed.*)
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Bengal Regulation II of 1793

(The Bengal Land-revenue Regulation, 1793.)¹

SHORT TITLE GIVEN	...	Act V of 1897.
		Ben. Regn. V of 1804. Ben. Regn. XV of 1813. Ben. Regn. III of 1822. Act XXV of 1854. Act VIII of 1868. Act XXVI of 1871. Act XII of 1873. Act XVI of 1874. Act XII of 1876. Ben. Act V of 1915.
REPEALED IN PART		
AMENDED		Act I of 1903. (a) The Government of India (Adaptation of Indian Laws) Order, 1937. (b) The India (Adaptation of Indian Laws) Order, 1947. (c) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948. (d) The Adaptation of Laws Order, 1950.
ADAPTED		

(1st May, 1793.)

A Regulation for abolishing the Courts of Mal Adalat or Revenue Courts, and transferring the trial of the suits which were cognizable in those Courts to the Courts of Diwani Adalat ; and prescribing Rules for the conduct of the Board of Revenue and the Collectors.

1. In ¹ * * * * * Bengal the greater Preamble.
part of the materials required for the numerous and valuable manufactures, and most of the other principal articles of export, are the produce of the lands : it follows that the commerce, and consequently the wealth of the country, must increase in proportion to the extension of its agriculture.

¹SHORT TITLE.—This short title was given by the Amending Act, 1897 (V of 1897).

LOCAL EXTENT.—This Regulation was passed for the former Province of Bengal—see paragraph 1 of the Preamble.

It has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), section 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), section 3, to be in force in West Jalpaiguri, in the district of Jalpaiguri.

PARTIAL REPEAL.—So much of this Regulation as requires the appointment of *diwans* in the different districts, or defines the duties of the *diwans*, or relates in any other manner, directly or indirectly, to those offices, was repealed by Bengal Regulation XV of 1813. Specific references in the Regulation to *diwans* were repealed by the Repealing Act, 1874 (XVI of 1874), and have been omitted.

²The words "the British territories in" were omitted by para. 3 and the Sixth Sch. of the Adaptation of Laws Order, 1950.

[Ben. Reg. II

(Sec. I.)

But it is not for commercial purposes alone that the encouragement of agriculture is essential to the welfare of these provinces.

The Hindus, who form the body of the people, are compelled, by the dictates of religion, to depend solely upon the produce of the lands for subsistence ; and the generality of such of the lower orders of the natives as are not of that persuasion are, from habit or necessity, in a similar predicament.

The extensive failure or destruction of the crops that occasionally arises from drought or inundation is in consequence invariably followed by famine, the ravages of which are felt chiefly by the cultivators of the soil and the manufacturers, from whose labours the country derives both its subsistence and wealth.

Experience having evinced that adequate supplies of grain are not obtainable from abroad in seasons of scarcity, the country must necessarily continue subject to these calamities until the proprietors and cultivators of the lands shall have the means of increasing the number of the reservoirs, embankments and other artificial works, by which, to a great degree, the untimely cessation of the periodical rains may be provided against, and the lands protected from, inundation ; and as a necessary consequence the stock of grain in the country at large shall always be sufficient to supply those occasional, but less extensive, deficiencies in the annual produce which may be expected to occur notwithstanding the adoption of the above precautions to obviate them.

To effect these improvements in agriculture, which must necessarily be followed by the increase of every article of produce, has accordingly been one of the primary objects to which the attention of the ¹[Government] has been directed in its arrangements for the internal Government of these provinces.

¹Substituted for the words " British Administration " by para. 3 and the Sixth Sch. of the Adaptation of Laws Order, 1950.

of 1793.]

(Sec. 1.)

As being the two fundamental measures essential to the attainment of it, the property in the soil has been declared to be vested in the landholders, and the revenue payable to Government from each estate has been fixed for ever.

These measures have at once rendered it the interest of the proprietors to improve their estates, and given them the means of raising the funds necessary for that purpose.

The property in the soil was never before formally declared to be vested in the landholders, nor were they allowed to transfer such rights as they did possess, or raise money upon the credit of their tenures, without the previous sanction of Government.

With respect to the public demand upon each estate, it was liable to annual or frequent variation at the discretion of Government.

The amount of it was fixed upon an estimate formed by the public officers of the aggregate of the rents payable by the *raiyats* or tenants for each *bigha* of land in cultivation, of which, after deducting the expenses of collection, ten-elevenths were usually considered as the right of the public and the remainder the share of the landholder.

Refusal to pay the sum required of him was followed by his removal from the management of his lands, and the public dues were either let in farm or collected by an officer of Government, and the above-mentioned share of the landholder, or such sum as special custom, or the orders of Government, might have fixed, was paid to him by the farmer or from the public treasury.

When the extension of cultivation was productive only of a heavier assessment, and even the possession of the property was uncertain, the hereditary landholder had little inducement to improve his estate, and moneyed men had no encouragement to embark their capital in the purchase or improvement of land, whilst not only the profit, but the security for the capital itself, was so precarious.

The same causes, therefore, which prevented the improvement of land depreciated its value.

(Sec. I.)

Further measures, however, are essential to the attainment of the important object above stated.

All questions between Government and the landholders respecting the assessment and collection of the public revenue, and disputed claims between the latter and their *raiya*ts, or other persons concerned in the collection of their rents, have hitherto been cognizable in the Courts of *Mal Adalat* or Revenue Courts.

The Collectors of the Revenue preside in these Courts as Judges, and an appeal lies from their decision to the Board of Revenue, and from the decrees of that Board to the Governor General in council¹ in the department of Revenue.

The proprietors can never consider the privileges which have been conferred upon them as secure, whilst the Revenue-officers are vested with these judicial powers.

Exclusive of the objections arising to these Courts from their irregular, summary, and often *ex parte* proceedings, and from the Collectors being obliged to suspend the exercise of their judicial functions whenever they interfere with their financial duties, it is obvious that, if the Regulations for assessing and collecting the public revenue are infringed, the Revenue-officers themselves must be the aggressors, and that individuals who have been wronged by them in one capacity can never hope to obtain redress from them in another.

Their financial occupations equally disqualify them for administering the laws between the proprietors of land and their tenants.

Other security, therefore, must be given to landed property and to the rights attached to it before the desired improvements in agriculture can be expected to be effected.

¹See the last paragraph of foot-note 1 on page 3, *ante*.

of 1793.]

(Sec. 2.)

Government must divest itself of the power of infringing, in its executive capacity, the rights and privileges which, as exercising the legislative authority, it has conferred on the landholders.

¹The Revenue-officers must be deprived of their judicial powers.

All financial claims of the public, when disputed under the Regulations, must be subjected to the cognizance of Courts of Judicature, superintended by Judges who, from their official situations and the nature of their trusts, shall not only be wholly uninterested in the result of their decisions, but bound to decide impartially between the public and the proprietors of land, and also between the latter and their tenants.

The Collectors of the Revenue must not only be divested of the power of deciding upon their own acts, but rendered amenable for them to the Courts of Judicature, and collect the public dues subject to a personal prosecution for every exaction exceeding the amount which they are authorized to demand on behalf of the public, and for every deviation from the Regulations prescribed for the collection of it.

No power will then exist in the country by which the rights vested in the landholders by the Regulations can be infringed or the value of landed property affected.

Land must, in consequence, become the most desirable of all property, and the industry of the people will be directed to those improvements in agriculture which are as essential to their own welfare as to the prosperity of the State.

The following rules, being the rules passed for the guidance of the Collectors and the Board of Revenue, on the 8th June, 1787, and the 25th April, 1788, with alterations adapted to the principles above stated, have been accordingly enacted.

2. [*Abolition of Courts of Mal Adalat.*—Rep. by the Repealing, Act, 1873 (XII of 1873),

¹This clause, and some of the preceding clauses of this Preamble, are obsolete, in consequence of the repeal of parts of this Regulation by later enactments.

(Secs. 3 - 7.)

Collectors
of
Revenue.

3. The collection of the revenue payable to Government from the estates in each *zila* is to be committed, as heretofore, to a civil covenanted servant of the Company, who is to be styled Collector of the Revenue of the *zila* to which he may be appointed ¹*

Collectors
subject to
Board of
Revenue.

4. The collectors are to correspond with the Board of Revenue, and to conform to all instructions with which they have been furnished by that Board, and that are or may not be altered or revoked by this or any other Regulation ²* * *, and also to all instructions which the Board of Revenue may hereafter transmit to them.

Seals of
Collectors.

5. The Collectors of the several *zilas* are to use a circular seal one inch and-a-half in diameter.

The seals of the Collectors in ³[West Bengal] [and Orissa] are to bear an inscription to the following effect, in the ³[West Bengal] ⁴* characters and ⁵[language], [and the seals of the Collectors in Bihar a similar inscription, in the ⁶* * * Hindusthani language and Nagri character] : "The seal of the Collector of the *zila* of"

Collectors
to keep
diary.

6. The Collectors are to keep a regular diary of their official transactions either in the English ⁷* or Bengali language, recording and attesting them with their official signature at the time they may take place.

Duties of
Collectors.

7. The duties prescribed in the following section are to be performed by the Collectors, under the superintendence of the Board of Revenue.

¹The second sentence of sec. 3, as to oaths, which was repealed by the Repealing Act, 1873 (XII of 1873), is omitted.

²The words and figures "published in the manner directed in Regulation 41, 1793," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

³Substituted for the word "Bengal" by para. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

⁴The words "and Persian" were omitted by para. 3 and the Sixth Sch. of the Adaptation of Laws Order, 1950.

⁵Substituted, *ibid.* for "languages".

⁶The words "Persian character and language, and the " were omitted, *ibid.*

⁷The word "Persian" was omitted, *ibid.*

Regulation, 1793.

of 1793.]

(*Sec. 8.*)

8. *First.*—To collect the amount of the fixed revenue assessed upon the land of the *zamindars*, independent *talukdars* or other actual proprietors of land with or on behalf of whom a settlement has been or may be concluded. Nature of duties.

Second.—To collect the stipulated annual revenue from the farmers of estates let in farm.

Third.—To levy the rents and revenue from estates held *khas*.

Fourth.—To make the future settlement of *khas* or farmed estates, agreeably to the regulations and instructions which they may receive for that purpose.

Fifth.—To prosecute for the recovery of the dues of Government from lands, of whatever description, held exempt from the payment of revenue under illegal or invalid tenures.

Sixth.—To pay the pensions and allowances included in the public revenue and the pensions and compensations granted in consequence of the abolition of the *sair*.

Seventh.—To execute the instructions which may be issued to them by the Court of Wards regarding disqualified landholders and their estates.

Eighth.—To superintend the division of landed property paying revenue to Government which may be ordered to be divided into two or more distinct estates.

Ninth.—To apportion the public revenue on lands ordered to be disposed of at public sale for the discharge of arrears of revenue.

1 *	*	*	*
2 *	*	*	*

Thirteenth.—To perform the above, and all other duties, according to the rules that have been or may be prescribed to them 3* * *

¹Clause *tenth* of section 8 which was repealed by the Bengal Decentralization Act, 1915 (Ben. Act V of 1915), is omitted.

²Clauses *eleventh* and *twelfth* which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

³The words and figures "by any Regulation published in the manner directed in Regulation 41, 1793," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

(Secs. 9—14.)

Fourteenth.—To transmit such annual, monthly or other accounts as they now furnish, or may be hereafter required to send by the Board of Revenue, or any officer under that Board empowered to require such accounts.

Fifteenth.—To conform to all special orders that have been or may be issued to them by the Board of Revenue, or by public officers empowered to issue such orders.

Officers to
obey orders
of
Collector.

9. 1* * All 2* officers under the Collector are to act agreeably to his orders and such rules as he may prescribe.

3* * * *

Collectors
not to
employ
private
servants
in public
matters.

10. The collectors are prohibited from employing, directly or indirectly, their private servants, whether banyas or others, in the discharge of any part of their public duties, it being required that, in all matters relating to the trust committed to them, they act as the only empowered agents of Government.

This prohibition, however, is not meant to restrict them from occasionally employing their assistants 4* * or their inferior public servants in the cases and in the manner in which they are authorized to make use of their agency.

11. [*Appointment and removal of Native cashkeepers.*]—*Omitted by Schedule XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.*

12. [*Form to be observed in issuing public money.*]—*Rep. by Act XXV of 1854.*

13. [*Appointment and removal of Native servants.*]—*Omitted by Schedule XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.*

In absence
of
Collector,
senior
Assistant
to officiate.

14. In the event of the death or removal of a Collector or of his absence from his station, the senior Assistant on the spot is to perform the duties of Collector 5* *, and the public officers of the Collectorship are accordingly to obey his orders.

¹The words "The *diwan* and," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

²The word "Native" was omitted by para. 3 and the Sixth Sch. of the Adaptation of Laws Order, 1950.

³The second paragraph of section 9 was omitted by para. 3 and Sch. XIV to the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴The words "or *diwans*," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

⁵The words "or *diwan*," were repealed, *ibid*.

of 1793.

(Secs. 15—23.)

15. No Collector, Assistant ¹* * to a Collector, or any ²[person] in the employ of a Collector or of an Assistant, shall hold, directly or indirectly, any farm, or be concerned on their private account in the collection or payment of the revenue of any lands in the zila, either as farmer, surety or otherwise; and ³* officers and private servants and dependents of Collectors and Assistants are prohibited from purchasing, directly or indirectly, any land that the Collector may dispose of at public sale, under the penalty of forfeiting the property to Government, upon proof being made, to the satisfaction of the ⁴[State] Government of the property having been so purchased.

Collectors and their officers prohibited being concerned extra-officially in revenues.

16. The rules in the preceding section, however, are not to be considered to prohibit ⁵[an officer] of a Collector, or any private servant of a Collector or of an Assistant, from purchasing *bona fide* the proprietary right in lands situated in the zila, by private sale.

Bona fide purchases of land at private sale by Collector's officers, etc.

17. [*Prohibition against giving land to Europeans.*]
—Rep. by the Repealing Act, 1868 (VIII of 1868).

18. [*Collectors and their Assistants prohibited from trading.*—Omitted by Schedule XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

19. [*Diwans prohibited from lending money to proprietors of land.*—Rep. by the Repealing Act, 1873 (XII of 1873).

20. The Collectors are to be careful that the accounts and records of their respective zilas are kept complete and duly preserved.

Collectors to keep records.

21, 22. [*Rules for rendering zilas compact, and prohibition against employing sepoys in collection of revenue.*]
—Rep. by the Repealing Act, 1874 (XVI of 1874).

23. [*Restriction on advances of takavi.*—Rep. by the Land Improvement Act, 1871 (XXVI of 1871).

¹The words "or diwan" were repealed by the Repealing Act, 1874 (XVI of 1874).

²Substituted for the word "Native" by para. 3, and the Sixth Sch. of the Adaptation of Laws Order, 1950.

³The word "Native" was omitted. *ibid.*

⁴Substituted for the word "Provincial" by para. 4(I), *ibid.*

⁵Substituted for the words "a Native Officer" by para. 3, and the Sixth Sch. of the Adaptation of Laws Order, 1950.

(Secs. 24—29.)

Collectors
not to
exercise
authority
beyond
limits of
their *zilas*
without
orders.

24. The Collectors are prohibited deputing any person into the *zila* of any other Collector, or exercising any authority beyond the limits of their respective *zilas*, excepting in cases in which they may be authorised so to do ¹* * * by special orders from a competent authority.

Rule with
regard to
receipts.

25. The Collectors are to give monthly receipts for all payments of revenue into their treasuries, specifying the date or dates on which the money may be received ²* * *.

The keepers of the ³* records are to keep a register of these receipts regularly numbered.

After having registered the receipts they are to attest on the face of them the date on which they may be registered.

A copy of this register is to be transmitted monthly to the Board of Revenue, or as often as that Board may require.

A similar register of receipts is to be kept by all *tahsildars*, *sazawals* or other ³* officers entrusted with the immediate collection of the public revenue, and a copy of it is to be transmitted to the Collector monthly or as often as he may require.

Register of
receipts for
salaries,
etc.

26. The monthly or other receipts, for salaries, pensions or allowances, of whatever kind, which may be paid by the Collectors, are to be deposited amongst the public records of their respective *zilas*, and a register of them is to be kept by the keepers of the ³* records ⁴* * *.

27. [*Collectors resigning or removed not to quit station without sanction.*—*Rep. by the Repealing Act, 1874 (XIV of 1874).*]

28, 29. [*Collectors to be subordinate to a Board of Revenue; its constitution.*—*Rep. by the Bengal Board of Revenue Regulation, 1822 (III of 1822).*]

¹The words and figures "by a Regulation published in the manner directed in Regulation 41, 1793, or," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

²The words "and the species of rupee in which each payment may be made," were repealed, *ibid*.

³The word "Native" was omitted by para. 3 and the Sixth Sch. of the Adaptation of Laws Order, 1950.

⁴The words "A copy of the register is to be transmitted annually to the Board of Revenue," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

of 1793.]

(Secs. 30—35.)

30 to 32. [*Power of Board over officers under them, and rules regarding deputations.*]—*Rep. by the Repealing Act, 1874 (XVI of 1874).*

33. The Board of Revenue are empowered to require the personal attendance of any proprietor or farmer of land or any dependent *talukdar*, under-farmer or *raiyat*, or any officer employed under a Collector, for the purpose of adjusting any settlement, or examining any accounts, or inquiring into any matter coming within their cognizance, provided the personal attendance of the party shall appear to them indispensably necessary.

In what case Board may require personal attendance of officers.

In such cases the Board are to direct the Collectors to serve such person with a written notice under his official seal and signature, specifying the business on account of which his attendance is judged necessary, and requiring him to attend the Board by such period as they may limit, under pain of being subject to such daily fine until he attends, or hews satisfactory cause for his non-attendance, as the Board may think proper to impose.

The Board are empowered to fine such persons neglecting to appear by the time required, in such amount as may appear to them proper upon a consideration of the case and the situation and circumstances in life of the party, and the amount of the fine shall be levied by the Collector, by the process prescribed for the recovery of arrears of revenue.

But the Board of Revenue are prohibited requiring the personal attendance of any person in cases in which the business can be transacted by a *vakil*.

34, 35. [*Execution of Board's orders, and powers of Members.*]—*Rep. by the Bengal Board of Revenue Regulation, 1822 (III of 1822).*

¹The word "Native" was omitted by para. 3 and the Sixth Sch. of the Adaptation of Laws Order, 1950.

(Secs. 36—41.)

Powers of
Board as to
settlement
of lands
held *khas*.

36. The Board of Revenue are empowered to issue orders to their subordinate officers for making the settlement of lands that are or may be *khas*, in conformity to the Regulations and any special instructions which may be prescribed to them by the ¹[State] Government.

Security
for pay-
ment of
revenue.

37. In all cases of a settlement being made with or on behalf of *zamindars*, independent *talukdars* or other actual proprietors of land, their lands are to be deemed sufficient security for the payment of the revenue.

But, where lands are let in farm, a *malzamin*, or surety for the punctual discharge of the revenue, is to be invariably required.

Remis-
sions.

38. No remissions upon the settlement of a preceding year, nor any remissions whatsoever, are to be required by the Board without the sanction of the ¹[State] Government.

Settle-
ments to
be made by
Collectors.

32. It is to be observed as a general principle that the settlement of lands that are or may be *khas* is to be made by the Collectors under the regulations and the instructions of the Board of Revenue.

But if the Board should deem a special deputation of one of their members, or of any other person, necessary to form the settlement of any such lands, they are to propose the measure to the ¹[State] Government with their reasons for recommending it.

Procedure
on settle-
ment being
concluded.

40. Upon a settlement being concluded with any proprietor or farmer, conformably to the Regulations, the Board of Revenue are to issue the usual *bandabasti parwana* to the proprietor or farmer, without applying to the ¹[State] Government for ²[its] sanction for that purpose.

Collection
of revenue.

41. The collection of the revenue is committed to the Collectors; but the Board of Revenue are to see that the revenues are realized by the stipulated periods, or that solid and satisfactory reasons are assigned by the Collectors for any delay or deficiency.

¹Substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

²The word "his", in the original text, is to be read as if the word "its" were substituted therefor—see the Amending Act, 1903 (1 of 1903).

of 1793.]

(Secs. 42—70.)

The power of coercion over the proprietors and farmers of land is also vested in the Collectors, as prescribed in Regulation XIV, 1793.¹

42. The Board are authorized to grant temporary suspensions of the demands of revenue whenever it may appear to them indispensably necessary, reporting the sum suspended, without delay to the ²[State] Government, with their reasons for the measure. But they are not to grant any suspensions beyond the current year.

Tempo-
rary sus-
pensions.

43. No remissions of balances are to be granted without the special authority of the ²[State] Government.

Remis-
sions of
balances.

44. [*Accounts to be furnished to Governor General.*—Rep. by the Land Improvement Act, 1871 (XXVI of 1871).

45. The Board of Revenue are to furnish the ²[State] Government with such annual, monthly or other accounts as they now are or may be required to submit to ³[it].

Duty of
Board to
furnish
accounts,
etc.

They are likewise to observe all special orders which they have received or may receive from the ²[State] Government.

46, 47. [*Prohibitions to be observed by Board, and acknowledgment for places restored to foreign powers.*—Rep. by the Repealing Act, 1874 (XVI of 1874).

48. [*Separate accounts of expenses for reducing rebellious zamindars and others.*—Rep. by the Repealing Act, 1873 (XII of 1873).

49 to 70. [*Rules for conducting the business of Board, and powers of President.*—Rep. by the Bengal Board of Revenue Regulation, 1822 (III of 1822).

¹Ben. Reg. XIV of 1793 was repealed by the Repealing Act, 1874 (XVI of 1874), but this reference is saved by the proviso to that Act.

²Substituted for the word "Provincial" by para. 4(I) of the Adaptation of Laws Order, 1950.

³The word "him", in the original text, is to be read as if the word "it" were substituted therefor—see the Amending Act, 1903 (I of 1903).

Bengal Regulation VIII of 1793

(The Bengal Decennial Settlement Regulation, 1793.)

CONTENTS.

SECTION.

- 1 to 3. (*Repealed*).
4. Settlement with whom to be concluded.
- 5 to 12. (*Repealed*).
13. Payment of revenue by *talukdars* ordered to be separated.
14. Separated *talukdars* where to pay revenue.
15. *Tahsildars*.
- 16 to 18. (*Repealed*).
19. *Istimrardars* to be considered as *patta talukdars*.
20. Exceptions to general order for conclusion of decennial settlement with actual proprietors of soil.
21. Management of lands of disqualified proprietors.
22. Exception as to proprietors of land in balance to Government and unable to pay arrears.
- 23 to 25. (*Repealed*).
26. Determination of agreement to *jama* of undivided estates.
27. Settlement of land standing in joint names of several proprietors, or of one for many.
- 28, 29. (*Repealed*).
30. Settlement of disputed estates.
31. If no claimant has been previously in possession.
32. Settlement in cases of disputes as to boundaries.
33. (*Repealed*).
34. Allowances of *kazis* and *kanungos*, and public pensions, to be added to the *jama*.
35. Assessment to be fixed exclusive of *sair* with exceptions.
36. Also exclusive of *lakhiraj* lands.
37. But not of *mdlikdāna* lands in Bihar, or other lands in West Bengal and Midnapore.
38. (*Omitted*).
39. *Nānkār*, *khamar*, *nij-jot* and other private lands of proprietors in West Bengal and Orissa to be annexed to the *mālguzdri* lands.
40. Consolidation of *mālguzdri* and private lands also in certain *taluks*.
41. *Chākarān* annexed to *mālguzdri* lands.
42. (*Repealed*).
43. Procedure in case of landholders declining to engage for *jama* proposed to them.
- 44 to 48. (*Repealed*).
49. Certain *istimrardars* not liable to increase of rent.
50. Exception to above.
51. Rules to prevent undue exactions from *talukdars*.
52. Power of actual proprietors to let remaining land as they think proper.
53. Lands so let not to be taken charge of without *amilnama*.
54. Process to prevent imposition on *rai-yats* under Denomination of *abwab*, *mathat*, etc.
55. Proprietors and farmers of lands prohibited imposing new *abwab* or *mathat* on *rai-yats*.

(Ben. Reg. VIII of 1793.)

SECTION.

56 to 63. (*Repealed.*)

64. Adjustment of *mufassal kistbandis*.

65. Bar to engagements contrary to Regulation.

66. Landholders, etc., not to interfere in matters coming within cognizance of Courts or Magistrates.

67. *First to Fourth*.—(*Repealed.*)

Fifth.—Collector to attend to spirit of Regulation, where not applicable to particular districts.

Sixth.—(*Repealed.*)

68 to 101. (*Repealed.*)

Bengal Regulation VIII of 1793

(The Bengal Decennial Settlement Regulation, 1793.)¹

SHORT TITLE GIVEN

Act V of 1897.

REPEALED IN PART AND
AMENDED ...

Ben. Regn. I of 1801.
Act I of 1903.

Ben. Regn. XVII of 1805.
Ben. Regn. V of 1812.
Ben. Regn. XIII of 1817.
Ben. Regn. I of 1819.
Ben. Regn. VII of 1896.
Act XVI of 1874.
Act XII of 1876.
Act, VIII of 1885.

REPEALED IN PART

- (a) The Government of India (Adap-
tation of Indian Laws) Order,
1937.
- (b) The Indian Independence (Adap-
tation of Bengal and Punjab
Acts) Order, 1948.
- (c) The Adaptation of Laws Order,
1950.

ADAPTED ...

(1st May, 1793.)

A Regulation for re-enacting, with modifications and amendments, the rules for the Decennial Settlement of the public revenue payable from the lands of the zamindars, independent talukdars and other actual proprietors of land, in Bengal, [Bihar and Orissa], passed for those Provinces, respectively, on the 18th September, 1789. [the 25th November, 1789 ; and the 10th February, 1790.] and subsequent dates.

1 to 3. [Re-enactment of code of rules passed on 23rd November, 1791 ; term of settlement ; to be perpetual with approbation of Court of Directors.]—Rep. by the Repealing Act, 1874 (XVI of 1874).

Settle-
ment with
whom to be
concluded.

4. The settlement, under certain restrictions and exceptions hereafter specified, shall be concluded with the actual proprietors of the soil, of whatever denomination, whether zamindars, talukdars or chaudhris.

5 to 12. [What talukdars to be actual proprietors ; payment of rent through actual proprietors ; what talukdars to be lease-holders ; jangalbari talukdars ; proprietors of mālguzāri aima lands ; rules for guidance of Collectors ; right of dissatisfied parties to sue in Court of Diwani Adalat.]—Rep. by the Repealing Act, 1874 (XVI of 1874).

¹SHORT TITLE.—This short title was given by the Amending Act, 1897 (V of 1897).

LOCAL EXTENT.—This Regulation was passed for the whole of the former Province of Bengal—see the title. It was declared, by the Laws-Local Extent Act, 1874 (XV of 1874), sec. 6 to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

The Regulations has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), sec. 5, to be in force in West Jalpaiguri. in the Jalpaiguri district,

[Ben. Reg. VIII

(Secs. 13—20.)

Payment of revenue by *talukdars* ordered to be separated. Separated *talukdars* where to pay revenue.

13. *Talukdars* ordered to be separated are not to be permitted to pay the revenue assessed upon their lands through the *zamindars* or other actual proprietors of estates as heretofore.

14. *Talukdars* who, in consequence of the rules in sections 5 and 9¹ may be separated from the *zamindars* or other actual proprietors of estates, through whom they heretofore paid their revenues, are to pay their revenue in future immediately into the Collector's treasury ; except in districts where, from the number of *taluks*, or other cause, this mode would be attended with considerable inconvenience, in which case *tahsildars*, or ²* Collectors, are to be appointed to receive the revenue of the *taluks* in such districts.

Tahsildars.

15. *Zamindars* or other actual proprietors of land, from whose *zamindaris* or estates *taluks* may be separated, shall not be appointed *tahsildars* to receive the revenue of the *taluks* so separated, but the office of *tahsildar* shall, in every instance, be given to some other person of character and responsibility, and the whole expense of it is to be defrayed by Government.

16 to 18. [*Rules respecting mukarrari leases and mukarraridars.*]*—Rep. by the Repealing Act, 1876 (XII of 1876).*

Istimrardars to be considered as *patta talukdars*.

19. *Istimrardars*, however, who have not got possession of their lands to the exclusion, or without the consent, of the actual proprietors, ³* * * but hold them of the proprietors on *patta* or lease, are to be considered as a species of *patta talukdars*, and the settlement is to be made with them as hereafter specified.

Exceptions to general order for conclusion of decennial settlement with actual proprietors of soil.

20. The exceptions to the general order for the conclusion of the decennial settlement with the actual proprietors of the soil, contained in section 4, include the following descriptions of persons : females (excepting those whom the ⁴[State] Government may judge competent to the management of their

¹Sections 5 and 9 were repealed by the Repealing Act, 1874 (XVI of 1874), but this reference is saved by the proviso to that Act.

²The word "Native" was omitted by para. 3 and the Sixth Sch. of the Adaptation of Laws Order, 1950.

³The words and figure "as the *mukarraridars* mentioned in section 18 are supposed to have done," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

⁴Substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

of 1793.]

(Secs. 21—26.)

own estates), minors, idiots, lunatics or others rendered incapable of managing their lands by natural defects or infirmities of whatever nature ; ¹* * * provided, however, with regard to the whole of these descriptions, that they are not partners in the *zamindaris*, independent *taluks* or other estates held by them, with others of a different description, in which case themselves or guardians are allowed, with their partners, to engage for the settlement of their lands, and elect a joint manager, under the restrictions hereafter mentioned.

21. The lands of disqualified proprietors, coming within the above descriptions, are to be managed for the benefit of the proprietors by persons appointed to the trust by the '[State] Government' * * * :

Management of lands of disqualified proprietors.

22. A further exception has been made to proprietors in balance to Government, and unable to pay the arrears due from them ; in which instances no settlement is to be concluded with the defaulting proprietors, but their lands are to be let in farm, or held *khas*, for a period of three years, at the discretion of the Collector.

Exception as to proprietors of land in balance to Government and unable to pay arrears.

23 to 25. [*Settlement of undivided estates possessed by several proprietors; appointment of manager; when guardians of proprietors may vote in choice of manager; nomination of manager by Collector.*—*Rep. by Ben. Reg. XVII of 1805.*]

26. The determination of the majority of the proprietors present, under the restrictions specified in section 23⁴, is also to be binding on the remainder, in agreeing or disagreeing to the *jama* proposed for undivided estates. The sharers, however, if dissatisfied, may obtain a division of their lands and a proportionate allotment of the revenue assessed thereon, but at their own expense.

Determination of agreement to *jama* of undivided estates.

¹The words "and persons whom the Governor-General in Council may deem disqualified on account of their contumacy or notorious profligacy of character;" which were repealed by Ben. Reg. VII of 1796, s. 2, are omitted.

²Substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

³The words "in the mode prescribed in Regulation 10, 1793, which also contains rules for the selection and conduct of such managers, as well as regarding the provision to be made for the support of the proprietors," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

⁴Section 23 was repealed by Ben. Reg. XVII of 1805.

(Secs. 27—34.)

Settle-
ment of
land
standing in
joint
names of
several
proprie-
tors, or of
one for
many.

27. When a portion of land stands in the joint names of several proprietors, or of one for many but each proprietor has his separate share in his own possession and management, or in that of an agent for him, the settlement is to be made for each share with the person in possession, and his land is to be held exclusively responsible for the revenue assessed upon it.

28, 29. [Settlement of mortgaged lands; settlement when proprietors are not forthcoming.]—Rep. by the Repealing Act, 1876 (XII of 1876).

Settle-
ment of
disputed
estates.

30. Where the property in lands is disputed, the settlement is to be made with the proprietor in possession, under an express declaration that he is nevertheless liable to the claims upon the estate, which is to be transferable to any other person to whom the property may be subsequently adjudged.

If no
claimant
has been
previously
in
possession.

31. If a case should occur in which none of the claimants shall have been previously in possession, they are to be allowed to appoint a manager until their claims shall have been determined in the *Diwani Adalat* of the *zila* : but, if they should not agree to a manager, the lands are to be held *khas*, and the surplus produce, after discharging the revenue, is to be kept in deposit, until the right of property shall be adjudged.

Settle-
ment in
cases of
disputes as
to bound-
aries

32. Where disputes exist concerning the boundaries of land, they are to be left to be adjusted in the *Diwani Adalat*, and the settlement is to be made in the meantime for the lands in possession of the disputing parties respectively.

33. [Rules for fixing assessment.]—Rep. by the Amending Act, 1903 (I of 1903).

Allow-
ances of
kazis and
kanungos,
and public
pensions,
to be added
to the
jama.

34. The allowances of the *kazis* and *kanungos* heretofore paid by the landholders, as well as any public pensions hitherto paid through the landholders, are to be added to the amount of the *jama*, and in future paid by the Collectors of the revenue of the several *zilas*, on the part of Government, under the rules and restrictions laid down for their guidance, with regard to such payments, in the Resolutions passed by the ¹[Central

¹These words were substituted for the words "Governor-General in Council" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 17

(Secs. 35—39.)

Government] on the 10th June, 1791, and re-enacted with modifications, by Regulation XXIV, 1793.¹

35. The assessment is to be fixed exclusive and independent of all duties, taxes and other collections known under the general denomination of *sair*; the collections made in the *ganjes*, *hāts* and *bazars* situated within the limits of the town of Calcutta excepted, and excepting also the collections confirmed to the proprietors and holders of *ganjes*, *bazars* and *hāts* by the Resolutions passed by the ²[Central Government] on the eleventh of June, 1790.

Assessment to be fixed exclusive of *sair*, with exceptions.

3

*

36. The assessment is also to be fixed exclusive and independent of all existing *lakhiraj* lands, whether exempted from the *khiraj* (or public revenue) with or without due authority.

Also exclusive of *lakhiraj* lands.

37. The above exemption, however, is not meant to include [*the mālikāna lands in Bihar*, or] the *nānkār*, *khamar*, *nij-jot* and other private lands of the *zamindars* and independent *talukdars* or other actual proprietors of land in ⁴[West Bengal] and Midnapore, regarding which the following rules have been prescribed.

But not of *mālikāna* lands in Bihar, or other lands in West Bengal and Midnapore.

38. [*Mālikāna lands in Bihar to be re-annexed.*]—
Omitted, as being inapplicable to Bengal.

39. The *nānkār*, *khamar*, *nij-jot* and other private lands appropriated by the *zamindars*, independent *talukdars* and other actual proprietors of land in ⁴[West Bengal] [*and Orissa*] to the subsistence of themselves and families shall be also annexed to the *mālguzāri* lands, and the ten years' *jama* fixed upon the whole under the following modification; that such proprietors as may decline to engage for their lands be allowed the option of retaining possession of their private lands above specified, upon the terms on which they have hitherto possessed them, provided they shall prove, to the

Nānkār, *khamar*, *nij-jot* and other private lands of proprietors in West Bengal and Orissa to be annexed to the *mālguzāri* lands.

¹Ben. Reg. XXIV of 1793 was repealed by the Pensions Act, 1871 (XXIII of 1871).

²See foot-note 1 on page 38, *ante*.

³The second sentence of sec. 35, which was repealed by the Repealing Act, 1874 (XVI of 1874), is omitted.

⁴Substituted for the word "Bengal" by para. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab) Acts Order, 1948.

(Secs. 40—43.)

satisfaction of the Board of Revenue, that they held them under a similar tenure previous to the 12th August, 1765, the date of the grant of the *diwani* to the Company, and have hitherto been permitted to keep possession of them, whenever their *zamindaris* or estates have been held *khas* or let in farm, but not otherwise.

In the event of such proof, and of their availing themselves of the option above given to retain possession of their private lands, a deduction, adequate to the neat produce of such lands, is to be made from the amount of the allowance fixed for excluded proprietors by section 44¹

Consolidation of *mālguzāri* and private lands also in certain *taluks*.

40. The above consolidation of the *mālguzāri* and private lands is also to be made in the *taluks* continued under the proprietors on whom they have hitherto been dependent; not, however, with a view of increasing the rents of the *talukdars*, but in order to make the whole of the lands composing their *taluks* answerable for their proportion of the public assessment allotted thereon.

Chākarān annexed to *mālguzāri* lands.

41. The *chākarān* lands or lands held by public officers and private servants in lieu of wages, are also not meant to be included in the exception contained in section 36. The whole of these lands in each ²[State] are to be annexed to the *mālguzāri* lands and declared responsible for the public revenue assessed on the *zamindaris*, independent *taluks* or other estates in which they are included, in common with all other *mālguzāri* lands therein.

42. [Engagements for the *jama* to be for *sicca rupees*.]—*Rep. by the Repealing Act, 1874 (XVI of 1874).*

Procedure in case of land-holders declining to engage for *jama* proposed to them.

43. In the event of any proprietor declining to engage for the settlement of his lands at the *jama* proposed to him, the Collector is to communicate the objections offered, with his opinion respecting them, to the Board of Revenue.

That Board is to determine the proper assessment after making such further inquiries as they may think necessary, and the objecting proprietor is to be required to engage for such

¹Section 44 was repealed by the Repealing Act, 1874 (XVI of 1874), but this reference is saved by the proviso to that Act.

²Substituted for the word "Province" by para. 4(I) of the Adaptation of Laws Order, 1950.

of 1793.)

(Secs. 44—50.)

assessment without further delay; and in the event of his refusal which is to be given in writing, his lands are to be let in farm or held *khas*, as the Board of Revenue may in each instance think most expedient.

44 to 47. [*Proprietors refusing to engage for the jama to receive málíkána; rules respecting payment of málíkána and enforcement of payment from farmers.*—Rep. by the Repealing Act, 1874 (XVI of 1874).

48. [*Settlement by proprietors with talukdars under them.*—Rep. by the Repealing Act, 1876 (XII of 1876).

49. It is to be understood, however, that *istimrardars* (*mukrarraridars*) of the nature of those described in section 18^a who have held their land at a fixed rent for more than twelve years, are not liable to be assessed with any increase, either by the officers of Government or by the *zamindar* or other actual proprietor of land, should he engage for his own lands.

Certain
istim-
rardars not
liable to
increase
of rent

With regard to such *istimrardars* also as have not held their lands at a fixed rent for so long a period, if the *zamindar* or other actual proprietor of land has bound himself by the deed which he may have executed not to lay any increase upon them, he shall not be allowed to infringe the conditions of the deed for his own benefit, but must confine his demands to the rent he may have voluntarily agreed to receive.

50. This last restriction imposed on the *zamindar* or other actual proprietor of land, in section 49, is not to be considered to preclude the officer of Government or farmer, in the event of the *zamindari* being held *khas* or let in farm, from assessing such *istimrardars* according to the general rate of the district.

Excep-
tion to
above.

^aSection 18 was repealed by the Repealing Act, 1876 (XII of 1876), but this reference is saved by the proviso to that Act.

(Secs. 51—54.)

Rules to prevent undue exactions from talukdars.

¹51. The following rules are prescribed to prevent undue exaction from the dependent talukdars :—

First.—No zamindar or other actual proprietor of land shall demand an increase from the talukdars dependent on him although he should himself be subject to the payment of an increase of *jama* to Government ; except upon proof that he is entitled so to do, either by the special custom of the district, or by the conditions under which the talukdar holds his tenure ; or that the talukdar by receiving abatements from his *jama*, has subjected himself to the payment of the increase demanded and that the lands are capable of affording it.

Second.—If, in any instance, it be proved that a zamindar or other actual proprietor of land exacts more from a talukdar than he has a right to, the Court shall adjudge him to pay a penalty of double the amount of such exaction, with all costs of suit, to the party injured.

Power of actual proprietors to let remaining lands as they think proper.

¹52. The zamindar or other actual proprietor of land is to let the remaining lands of his zamindari or estate, under the prescribed restrictions, in whatever manner he may think proper ; but every engagement contracted with under-farmers shall be specific as to the amount and conditions of it ; and all sums received by any actual proprietor of land or any farmer of land, of whatever description, over and above what is specified in the engagements of the persons paying the same, shall be considered as extorted, and be repaid with a penalty of double the amount. The restrictions prescribed and referred to in this section are the following :

Lands so let not to be taken charge of without *amilnama*.

¹53. No person contracting with a zamindar, independent talukdar or other actual proprietor, or employed by him in the management of the collections, shall be authorized to take charge of the lands or collections without an *amilnama*, or written commission, signed by such zamindar, independent talukdar or other actual proprietor.

Process to prevent imposition on raiyats under denomination of *abwab*, *mathat*, etc.

¹54. The impositions upon the raiyats, under the denomination of *abwab*, *mathat* and other appellations, from their number and uncertainty having become intricate to adjust, and a source of oppression to the raiyats, all proprietors of land and dependent talukdars shall revise the same, in concert with the raiyats, and consolidate the whole with the *assal* into one specific sum.

¹Sections 51 to 55, 64 and 65 are repealed by sec. 2(1) of the Bengal Tenancy Act, 1885 (VIII of 1885), in the whole of the former Province of Bengal, except the town of Calcutta, the Division of Orissa and the Scheduled Districts. The extension of the repeal to Scheduled Districts depends upon the terms of notifications extending the Act of 1885 to such districts. Under the terms of the notification extending the Act of 1885 to the Jalpaiguri district, the repeal has taken effect in that district.

of 1798.)

(Secs. 55—64.)

In large *zamindaris* or estates the proprietors are to commence this simplification of the rents of their *raiya*ts in the *parganas* where the impositions are most numerous, and to proceed in it gradually till completed; but so that it be effected for the whole of their lands by the end¹ of the ²[West Bengal] year 1198 in the ³[West Bengal] districts, [and of the *Fasli* and *Wilayati* year 1198 in the Bihar and Orissa districts,] these being the periods fixed for the delivery of *pattas*, as hereafter specified.

⁴55. No actual proprietor of land and dependent *talukdar* or farmer of land, of whatever description, shall impose any new *abwab* or *mathat* upon the *raiya*ts under any pretence whatever.

Proprietors and farmers of land prohibited imposing new *abwab* or *mathat* on *raiya*ts.

Every exaction of this nature shall be punished by a penalty equal to three times the amount imposed; and if, at any future period, it be discovered that new *abwab* or *mathat* have been imposed, the person imposing the same shall be liable to this penalty for the entire period of such impositions.

56, 57. [Variations of *pattas* according to articles of produce; what *pattas* delivered to *raiya*ts shall contain.]—Rep. by the Repealing Act, 1876 (XII of 1876).

58. [Forms of *pattas*.]—Rep. by the Bengal Land-revenue Sales Regulation, 1812 (V of 1812).

59, 60. [Right of *raiya*ts to demand *pattas*; existing leases to remain in force until period of expiration; restriction on cancelling *pattas* of *khudkast raiya*ts.]—Rep. by the Repealing Act, 1876 (XII of 1876).

61. [Time allowed for delivery of *pattas* to *raiya*ts.]—Rep. by the Repealing Act, 1874 (XVI of 1874).

62. [Rules regarding *patwaris*.]—Rep. by the Bengal *Patwaris* Regulation, 1817 (XII of 1817), as extended by the Bengal *Kanungos* and *Patwaris* Regulation, 1819 (I of 1819).

63. [Proprietors to give receipts for rent or revenue received, and not to demand rent of absconded *raiya*ts from those who remain.]—Rep. by the Repealing Act, 1874 (XVI of 1874).

⁵64. The proprietors of land, dependent *talukdars* and farmers of land, of every description, are to adjust the instalments of the rents receivable by them from their under-renters and *raiya*ts, according to the time of reaping and selling the produce, and they shall be liable to be sued for damages for not conforming to this rule.

Adjustment of *mufassal kisthandis*.

¹i.e., the 1st April, 1792.

²Substituted for the word "Bengal" by para 3 (2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³As to the local repeal of secs. 55 and 64, see foot-note 1 on page 42, ante.

[Ben. Reg. VIII

(Secs. 65—101.)

Bar to engagements contrary to Regulation.

Land-holders, etc., not to interfere in matters coming within cognizance of Courts or Magistrates.

65. No proprietor of land of dependent *talukdar* shall contract any engagement with any under-farmer, or authorize any act, contrary to the letter and meaning of this Regulation.

66. *Zamindars*, independent *talukdars* and other actual proprietors of land, dependent *talukdars*, farmers of land holding farms immediately of Government, and all persons farming lands of the abovementioned descriptions of land-holders and farmers of land, and their respective officers, agents, servants, dependents and *rai-yats*, are prohibited from taking cognizance of, or interfering in, matters, or causes coming within the jurisdiction of the Courts of Civil Judicature, ²* . . . or the Magistrates, under pain of being liable to the payment of such fine to Government, and damages to the party injured, as the Court of Judicature in which they may be prosecuted for the act may deem it proper to impose and award.

67. *First to Fourth*.—[Restrictions in the *kabuliyats* to be in force; proprietors entitled to sell or mortgage their estates from date of settlement; rules regarding recovery of arrears from *rai-yats*; withdrawal of police jurisdiction from proprietors.]—Rep. by the Repealing Act, 1876 (XII of 1876).

Fifth.—In the original rules, abovementioned it was also directed that, if in any instance the Regulations should appear inapplicable to the circumstances of any particular district, the Collector should attend to the spirit of them, and carry them into execution in such mode as circumstances might allow, reporting any alterations or modifications which he might deem necessary.

This rule is to be considered still in force in forming any settlements which remain to be concluded, but it is not to be construed to empower the Collector to exercise any judicial authority.

Sixth.—[Settlement under Regulations in force prior to the original rules for the decennial settlement.]—Rep. by the Repealing Act, 1876 (XII of 1876).

68 to 101. [Special orders for Bengal, Bihar, Midnapore and Salt Districts.]—Rep. by the Repealing Act, 1874 (XVI of 1874).

¹As to the local repeal of sec. 65, see foot-note 1 on page 42, ante.

²The words "or the Courts of Circuit" which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

Collector to attend to spirit of Regulation, where not applicable to particular districts.

Bengal Regulation XI of 1793

(The Bengal Inheritance Regulation, 1793.)¹

SHORT TITLE GIVEN ...	...	Act V of 1897.
APPLICATION RESTRICTED	...	{ Ben. Regn. X of 1800. Ben. Regn. XII of 1805.
AMENDED	...	Act XII of 1891.
REPEALED IN PART	...	Act XVI of 1874.
ADAPTED	...	The Government of India (Adaptation of Indian Laws) Order, 1937.

(1st May, 1793.)

A Regulation for removing certain restrictions to the operation of the Hindu and Muhammadan laws with regard to the inheritance of landed property subject to the payment of revenue to Government.

Preamble.

1. A custom, originating in consideration of financial convenience, was established in these Provinces under the Native Administrations, according to which some of the most extensive zamindaris are not liable to division.

Upon the death of the proprietor of one of these estates it devolves entire to the eldest son, or next heir of the deceased, to the exclusion of all other sons or relations.

This custom is repugnant both to the Hindu and Muhammadan laws, which annexed to primogeniture no exclusive right of succession to landed property, and consequently subversive of the rights of those individuals who would be entitled to a share of the estates in question were the established laws of inheritance allowed to operate with regard to them as well as all other estates.

It likewise tends to prevent the general improvement of the country, from the proprietors of these large estates not having the means, or being unable to bestow the attention, requisite for bringing into cultivation the extensive tracts of waste land comprised in them.

For the above reasons, and as the limitation of the public demand upon the estates of individuals as they now exist, and the rules prescribed for apportioning the amount of it on the several shares of any estates which may be divided, obviate the objections and inconveniences that might have arisen from such divisions when the public demand was liable to annual or frequent variation, the Governor General in Council has enacted the following rules :

¹SHORT TITLE.—This short title was given by the Amending Act, 1897 (V of 1897).

LOCAL EXTENT.—This Regulation was declared by the Laws Local Extent Act, 1874 (XV of 1874), sec. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled District.

It has been declared by notification under the Schedule District Act, 1874 (XIV of 1874), sec. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

(Secs. 2—4.)

Descent of
landed
property
after 1st
July, 1794.

2. ¹* * * if any *zamindar*, independent *talukdar* or other actual proprietor of land shall die without a will, or without having declared by a writing, or verbally, to whom and in what manner his or her, landed property is to devolve after his or her demise, and shall leave two or more heirs, who by the Muhammadan or Hindu law (according as the parties may be of the former or latter persuasion) may be respectively entitled to succeed to a portion of the landed property of the deceased, such persons shall succeed to the shares to which they may be so entitled.

Estate how
held on
death of
actual
proprietor.

3. If any *zamindar*, independent *talukdar* or other actual proprietor of land shall die ²* * * without a will, or without having declared by a writing, or verbally, to whom and in what manner his or her landed property is to devolve after his or her demise, and shall leave two or more heirs, who by the Muhammadan or Hindu law (according as the parties may be of the former or latter persuasion) shall be respectively entitled to succeed to a portion of the landed property of the deceased under the rule contained in ³[section 2] such persons shall be at liberty, if they shall prefer so doing, to hold the property as a joint undivided estate.

Ben. Act
VIII of
1876.

If one or more, or all of the sharers shall be desirous of having separate possession of their respective shares, a division of the estate shall be made in the manner directed in ⁴[the Estates Partition Act, 1876], and such sharer or sharers shall have the separate possession of such share or shares accordingly.

If there shall be three or more sharers, and any two or more of them shall be desirous of holding their shares as a joint undivided estate, they shall be permitted to keep their shares united accordingly.

Shares
held
separate
how
assessed.

4. ⁵* * * if any one or more of such sharers shall apply to have the separate possession of his or their share or shares, the proportion of the public *jama* charged upon the whole estate which is to be assessed upon such share or shares is to be adjusted according to the rules prescribed in section 10, Regulation 1, 1793.⁶

¹Words and figures as to dates, which were repealed by the Repealing Act, 1874, (XVI of 1874), are omitted.

²The words and figure "subsequent to the period specified in section 2," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

³This word and figure were substituted for the words "that section" by the Amending Act, 1891 (XII of 1891).

⁴These words and figures were substituted for the word and figures "Regulation 25, 1793", by the Amending Act, 1891 (XII of 1891). Ben. Act VIII of 1876 has been repealed and re-enacted by the Estates Partition Act, 1897 (Ben. Act V of 1892), and this reference should now be construed as a reference to the latter Act—see sec. 2(2) thereof.

⁵The reference to Reg. VIII of 1793 which was repealed by the Repealing Act, 1874, (XVI of 1874), is omitted.

⁶The Bengal Permanent Settlement Regulation, 1793.

of 1793.]

(Sec. 5.)

If the estate is held *khas* or let in farm, the provisions contained in section 11, Regulation 1, 1793,¹ regarding estates so circumstanced which may be divided, will be applicable to it.

5. Nothing contained in this Regulation is to be construed to ⁹* * * prohibit any actual proprietor of land bequeathing or transferring by will, or by a declaration in writing, or verbally, either prior or subsequent to the 1st July, 1794, his or her landed estate entire to his or her eldest son or next heir, or other son or heir, in exclusion of all other sons or heirs, or to any person or persons, or to two or more of his or her heirs, in exclusion of all other persons or heirs, in the proportions, and to be held in the manner, which such proprietor may think proper :

Saving of
bequests
and
transfers.

Provided that the bequest or transfer be not repugnant to any ⁸[laws for the time being in force], nor contrary to the Hindu or Muhammadan law ; and that the bequest or transfer, whether made by a will or other writing, or verbally, be authenticated by, or made before, such witnesses, and in such manner, as those Laws ⁴* * * respectively do or may require.

¹The Bengal Permanent Settlement Regulation. 1793.

²Portions of secs. 5 and 6 which were repealed by the Repealing Act, 1874 (XVI of 1874), with the effect of running the two sections into one, have been omitted.

³These words were substituted for the words " Regulations that have been or may be passed by the Governor General in Council " by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴The words " and Regulations " were omitted, *ibid*.

Bengal Regulation XIX of 1793

(The Bengal Revenue-free Lands (Non-Badshahi Grants) Regulation, 1793.)

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Bengal Regulation XIX of 1793

(The Bengal Revenue-free Lands (Non-Badshahi Grants) Regulation, 1793.)¹

SHORT TITLE GIVEN	...	Act I of 1903.
SUPPLEMENTED	...	Ben. Regn. XIV of 1825. Ben. Regn. II of 1819. Act X of 1859. Act VIII of 1868. Act XVI of 1874. Act XII of 1891. Ben. Act VII of 1876.
REPEALED IN PART		
REPEALED IN PART AND AMENDED		Act I of 1903.
ADAPTED		(a) The Government of India (Adaptation of Indian Laws) Order, 1937. (b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948. (c) The Adaptation of Laws Order, 1950.

(1st May 1793)

A Regulation for re-enacting, with modifications, the rules passed by the Governor General in Council on the 1st December, 1790, for trying the validity of the titles of persons holding, or claiming a right to hold, lands exempted from the payment of revenue to Government, under grants not being of the description of those termed badshahi or royal; and for determining the amount of the annual assessment to be imposed on lands so held, which may be adjudged or become liable to the payment of public revenue.

1. By the ancient law of the country the ruling power is entitled to a certain proportion of the produce of every bigha of land (demandable in money or kind, according to local custom), unless it transfers its right thereto for a term or in perpetuity, or limits the public demand upon the whole of the lands belonging to an individual, leaving him to appropriate to his own use the difference between the value of such proportion of the produce and the sum payable to the public, whilst he continues to discharge the latter. Preamble.

As a necessary consequence of this law, if a *zamindar* made a grant of any part of his lands to be held exempt from the payment of revenue, it was considered void, from being an alienation of the dues of Government without its sanction.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Regulation was declared by the Cuttack Land-revenue Regulation, 1805 (XII of 1805), secs. 17 and 24, to be in force, with modifications, in the *Parganas* of Pataspur and Bograi in the district of Midnapore in West Bengal.

It was afterwards declared by the Laws Local Extent Act, 1874 (XV of 1874), sec. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

The Regulation has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), sec. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

[Ben. Reg. XIX

(See. 1.)

Had the validity of such grants been admitted, it is obvious that the revenue of Government would have been liable to gradual diminution.

Previous, however, to the Company's accession to the *Diwani*, numerous grants of this description were made, not only by the *zamindars*, but by the officers of Government appointed to the temporary superintendence of the collection of the revenue, under the pretext that the produce of the lands was to be applied to religious or charitable uses.

Of these grants some were applied to the purposes for which they were professed to have been made, but in general they were given for the personal advantage of the grantee, or with a view to the clandestine appropriation of the produce to the use of the grantor, or sold to supply his private exigencies.

In conformity to the principles which prevailed under the *Native Administration*, the British Government have at various times declared all grants for holding land exempt from the payment of revenue made since the date of the Company's accession to the *Diwani*, without their sanction, illegal and void.

Their lenity, however, induced them to adopt it as a principle that grants of this description made previous to the date of the *Diwani*, and provided the grantees had obtained possession, should be held valid to the extent of the intentions of the grantor, as ascertainable from the terms of the writings by which the grants might have been made, or from their nature and denomination.

But no complete register of these exempted lands having been formed upon the Company's accession to the *Diwani*, nor subsequent to that period, many *zamindars*, as well as the temporary farmers of the public revenue, and the officers of Government to whom the collection of the revenue in the different districts has been occasionally committed, in consequence of the *zamindars* refusing to pay the revenue demanded of them, have availed themselves of the abovementioned rule of limitation to make grants of extensive tracts of land to others, or in the names of their relations or dependents, for their own

of 1793.]

(Sec. 1.)

use, dating the deeds for these alienations previous to the Company's accession to the *Diwani*, or procuring them to be registered in the *zamindari* records as having been alienated prior to that period.

Others have made such alienations without antedating the grants, and left it to the grantee to maintain himself in possession by such means as circumstances might afford, in the event of his title being brought into question.

The Governor General in Council¹ deeming it incumbent on him to recover the public dues thus alienated in opposition to the ancient and existing laws of the country, as well as to resume the revenue of all lands the grants for which might expire ; and as the proprietors of estates were not entitled to collect such of the public dues from the lands included in their estates, as Government had judged it advisable to transfer to individuals, or to resume those which had been alienated by themselves or others, the amount in both cases being excluded from the assets on which the settlement was to be concluded, it was made a rule at the time of forming the decennial settlement, and which has been re-enacted by section 36, Regulation VIII, 1793,² that the *jama* assessed upon the estates of individuals was to be considered as exclusive and independent of all existing *lakhiraj* lands, whether exempted from the *khiraj* or public revenue, with or without due authority ; and by the third clause of the seventh article of the Proclamation contained in Regulation 1, 1793,³ which specifies the conditions under which Government declared the decennial settlement permanent, it is expressly stipulated that the Governor General in Council¹ will impose such assessment as he may deem equitable on all lands at present alienated and paying no public revenue, which have been or may be proved to be held under illegal or invalid titles.

The Governor General in council,¹ however, at the same time that he is desirous of recovering the public dues from

¹See the last paragraph of foot-note 1 on page 3, *ante*.

²The Bengal Decennial Settlement Regulation, 1793.

³The Bengal Permanent Settlement Regulation, 1793.

[Ben. Reg. XIX]

(Sec. 2.)

lands which have been illegally alienated, is equally solicitous that persons holding such grants under titles that are declared valid should be secured in the possession and enjoyment of their property.

It is likewise his wish that the recovery of the dues of Government from those lands which have been illegally alienated previous to the 1st December, 1790, should be attended with as little distress as possible to the possessors ; and, to obviate all injustice or extortion in the inquiry into the titles of persons holding exempted lands, he has further resolved that the claims of the public on their lands (provided they register the grants as required in this Regulation) shall be tried in the Courts of Judicature, that no such exempted lands may be subjected to the payment of revenue until the titles of the proprietor shall have been adjudged invalid by a final judicial decree.

Upon the above grounds, and with a view to facilitate the recovery of the public dues from lands held exempted under invalid grants, as well as to prevent any similar alienations being hereafter made, to the prejudice of the security of the public revenue which has been assessed in perpetuity upon the estates of individuals ; and further, that Government and the officers employed in the collection of the public revenue may at all times have in their possession a correct register of the lands in the several *zilas* held exempt from the payment of revenue, the following rules, containing the rules passed on the 1st December, 1790, with modifications, have been enacted :

Validity of
grants of
alienated
land made
before and
after 12th
August,
1765.

2. *First*.—All grants for holding land exempt from the payment of revenue made previous to the 12th August, 1765, the date of the Company's accession to the *Diwani*, by whatever authority, and whether by a writing or without a writing, shall be deemed valid, provided the grantee actually and *bona fide* obtained possession of the land so granted previous to the date abovementioned, and the land shall not have been subsequently rendered subject to the payment of revenue by the officers or the orders of Government.

of 1793.]

(Sec. 2.)

If it shall be proved, to the satisfaction of the Court, that the grantee did not obtain possession of the land so granted previous to the 12th August, 1765, or that he did obtain possession of it prior to that date but that, it has been since subjected to the payment of revenue by the officers or the orders of Government, the grant shall not be deemed valid.

Second.—In the event, however, of a claim being preferred by any person to hold land exempt from the payment of revenue, under a grant made previous to the date of the Company's accession to the *Diwani*, and of it being proved, to the satisfaction of the Court in which the suit may be instituted in the first instance, or to which it may be appealed, that the grantee held the land exempt from the payment of revenue previous to that date, but that it was subjected to the payment of revenue posterior thereto by an officer of Government, and the Court shall entertain doubts as to the competency of such officer, under the powers vested in him, to subject the lands to the payment of revenue, the Court shall suspend its judgment and report the circumstances to the ¹[State] Government, to whom a power is reserved of determining whether such officer was or was not competent to subject the land to the payment of revenue; and, upon receiving the determination of the ¹[State] Government, the Court is to decide accordingly.

Reference
of doubtful
claims to
State
Govern-
ment.

No such claim, however, to hold exempt from the payment of revenue land that may have been subjected to the payment of revenue for the twelve years preceding the date on which the claim may be instituted shall be heard by any *Zila* or City Court unless the claimant can show good and sufficient cause for not having preferred the claim to a ²competent jurisdiction within the twelve years ³*.*.

¹Substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws order, 1950.

²*Sic.* in Clarke.

³The words and figures "and proceeded in it, as required by section 14, Regulation 3, 1793, which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

(Sec. 2.)

No persons, not being original grantees, entitled to hold lands free of revenue.

Third.—But no part of the two preceding clauses is to be construed to empower the Courts to adjudge any person, not being the original grantee, entitled to hold exempt from the payment of revenue land now subject to the payment of revenue, under a grant made previous to the Company's accession to the *Diwani*, the writing for which may expressly specify it to have been given for the life of the grantee only : or supposing no such specification to have been made in the writing, or the writing not to be forthcoming or no writing to have been executed, where the grant, from the nature and denomination of it, shall be proved to be a life-tenure only according to the ancient usages of the country.

Nor also heirs of present possessors.

Fourth.—Nor to entitle the heirs of any person now holding land exempt from the payment of public revenue under a grant made previous to the *Diwani*, to succeed to and hold such land exempt from the payment of revenue upon the demise of the present possessor, where the writing for such grant may expressly specify it to have been given, for the life of the grantee only ; or supposing no such specification to have been made in the writing, or the writing not to be forthcoming, or no writing to have been executed, where, from the nature and denomination of the grant, it shall be proved to be a life-tenure only, according to the ancient usages of the country.

Nor to entitle the heir to any such person to hold the lands exempt from the payment of revenue after his demise, supposing the writing for the grant not to specify whether it was to be considered hereditary or otherwise ; unless it shall be proved, to the satisfaction of the Court, that the grant, from the nature and denomination of it, is hereditary according to the ancient usages of the country.

But upon the demise of the present possessor of any such grant, which may be adjudged not hereditary under this clause, if it shall appear that one or more successions, in virtue of whatever right, shall have taken place before the date of the *Diwani*, the lands shall not be subjected to the payment of

of 1793.]

(Sec. 3.)

revenue under the decree without the sanction of the ¹[State] Government, to whom a copy of the proceedings and decree of the court is to be transmitted, and to whom is reserved a power of declaring the lands subject to the payment of revenue or not, as may appear to ²[it] proper.

Fifth.—The present possessors of lands now exempt from the payment of revenue, under such life-grants made previous to the *Diwani*, and declared by the preceding clause not to be hereditary, are prohibited from selling or otherwise transferring them, or mortgaging the revenue of them for a longer period than their own lives, and all such transfers and mortgages are declared illegal and void.

Present possessors prohibited from transferring or mortgaging grants.

It is to be understood, however, that if any such life-grants shall have been confirmed as hereditary tenures by Government, or by the officers of Government empowered so to confirm them, they are not to be liable to the payment of revenue on the death of the present possessors, and are to be excepted from the other rules contained in this and the preceding clause.

If doubts shall arise in any Court as to the competency of the authority of any officer of Government to confirm any such life-grant as hereditary, the Court is to suspend its judgment and report the circumstances to the ¹[State] Government, to whom a power is reserved of determining finally whether such officer possessed competent authority to confirm the grant as hereditary, or not and the Court, upon receiving the determination of the ¹[State] Government is to decide accordingly.

3. *First.*—All grants for holding land exempt from the payment of revenue, which may have been made since the 12th August, 1765, and previous to the 1st December, 1790, corresponding with the 18th Aghan, 1197, ²[West Bengal] era, [the 10th Aghan, 1198, Fasli], the 18th Aghan, 1198, Wilayati, by any other authority than that of Government, and which may not have been confirmed by Government, or by any officer empowered to confirm them, are declared invalid.

All grants made or confirmed since *Diwani* declared invalid.

¹Substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

²The word "him," in the original text, is to be read as if the word "it" were substituted therefor—see the Amending Act, 1903 (1 of 1903).

³Substituted for the word "Bengal" by para. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

(Sec. 4.)

Courts
how to
proceed in
case of
doubt of
authority
of officer
confirming
grant.

Second.—If doubts shall be entertained by any Court as to the competency of the authority of any officer to confirm any such grant, the Court is to suspend its judgment, and report the circumstances of the case to the ¹[State] Government, to whom a power is reserved of determining finally whether the officer possessed competent authority to confirm the grant, or otherwise, and the Court, upon receiving the determination of the [State] Government shall decide accordingly.

Exception
in favour
of grants
made by
chiefs of
Provincial
Councils.

Third.—The rule contained in clause first is not to be considered to extend to authorize the subjecting to the payment of revenue land held exempt from the payment of it under grants made previous to the commencement of the ²[West Bengal] year 1178³ or the [Fasli or] Wilayati year 1179] (according as the land may be situated in ³[West Bengal], Bihar or Orissa), [under the signature of the chiefs of the late provincial councils and the seals of those councils, agreeably to an authority vested in them by Government for granting land to be held exempt from the payment of revenue, the annual produce of which did not exceed one hundred rupees.

And also of
certain
grants
made for
religious or
charitable
purposes

Fourth.—Nor to authorize the subjecting to the payment of revenue any land the grants for which, whether for the life of the grantee or otherwise, were made previous to the commencement of the ²[West Bengal] year 1178³ or the [Fasli or] Wilayati year 1179 (according as the land may be situated in ¹[West Bengal], Bihar or Orissa), where the quantity of land granted shall not exceed ten bighas, and the produce of it is bona fide appropriated as an endowment on temples, or to the maintenance of Brahmins, or other religious or charitable purposes.

The rule in this clause is declared to extend also to all grants of land whatever, not exceeding ten bighas, made previous to the *Diwani*, the produce of which may be now so appropriated.

Disputes
regarding
proprietary
rights.

4 This Regulation, as far as regards lands alienated previous to the 1st December, 1790, respects only the question whether they are liable to the payment of revenue or otherwise.

Every dispute or claim regarding the proprietary right in lands alienated previous to that date, and which, in conformity

¹Substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

²Substituted for the word "Bengal" by para. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³i.e., the 15th April, 1770.

of 1793.]

(Sec. 5.)

to this Regulation, may become subject to the payment of revenue, is to be considered as a matter of a private nature, to be determined by the Courts of *Diwani Adalat*, in the event of any dispute or claim arising respecting it between the grantee and the grantor, or their respective heirs or successors.

The grantees, or the present possessors, until dispossessed by a decree of the *Diwani Adalat*, are to be considered as the proprietors of the lands, with the same right of property therein as is declared to be vested in proprietors of estates or dependent *taluks* (according as the land may exceed or be less than one hundred *bighas* as specified in sections 6, 7¹ * *), subject to the payment of revenue, and they are to execute engagements for the revenue with which their lands may be declared chargeable, either to Government, or to the proprietor or farmer of the estate in which the lands may be situated, or to the officer of Government (according as the revenue of the estate in which the land may be situated may be payable by the proprietor or a farmer, or collected *khas*), under the rules for the decennial settlement.

If by the decision of the *Diwani Adalat* the proprietary right in the land shall be transferred, the person succeeding thereto is, in like manner, to be responsible for the payment of the revenue assessed or chargeable thereon.

5. By continuing the proprietary right in the land to the grantee or possessor, in the cases specified in the preceding section, instead of dispossessing him of the land altogether, agreeably to former usage, and assessing the land in the mode prescribed in the two following sections, a liberal provision will be left to him.

Effect of continuing proprietary right to grantee in possession.

¹The word and figure "and 21", which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

[Ben. Reg. XIX

(Secs. 6, 7.)

Where the grant may have been made before the '[West Bengal] year 1173¹ or the [Fasli or] Wilayati year 1179, the proprietor will hold his land as an estate paying a fixed revenue of only half the amount assessed on other *malguzari* lands in the country ;

and, where the grant may have been made subsequent to the above-mentioned periods, he will hold the land as subject to the payment of the same revenue as other lands assessed with revenue, under the rules for the decennial settlement, as hereafter directed.

To whom
revenue
assessed on
lands, not
exceeding
100 *bighas*
alienated
before 1st
December,
1790, is to
belong.

6. The revenue assessable under section 9 on land not exceeding one hundred *bighas* of the measurement that may prevail in the *pargana* wherein it may be situated, and whether lying in one village, or two or more villages and that may have been alienated by any one grant made previous to the 1st December, 1790, and which may be adjudged or become liable to the payment of revenue, shall belong to the person responsible for the discharge of the revenue of the estate or dependent *taluk* in which the land may be situated, notwithstanding anything said in section 8, Regulation I, 1793² ;

and he shall not be liable to the payment of any additional revenue on account of the assessment which may be chargeable on such lands during the continuance of the engagement under which he may pay the revenue of such estate or dependent *taluk*, when the land may be so adjudged liable to the payment of revenue.

If the estate or dependent *taluk* shall be held *khas*, when the lands are decreed liable to the payment of revenue, the amount is to be collected by, and paid to, whomsoever the rents and revenue of the estate or *taluk* may be payable, until a settlement shall be concluded for the revenue of it, either with the proprietor or a farmer.

The land which may be so adjudged subject to the payment of the revenue is to be considered as a dependent *taluk*.

Revenue
on lands
exceeding
100 *bighas*,
alienated
prior to 1st
December,
1790, to
belong to
Govern-
ment.

7. The revenue assessable under section 8 on land exceeding one hundred *bighas* of the measurement that may prevail in the *pargana* wherein it in may be situated, and whether lying in one village, or two or more villages, and alienated by any one grant made previous to the 1st December, 1790, and which may be adjudged or become liable to the payment of revenue, is declared to belong to Government.

¹Substituted for the word "Bengal" by para. 5(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

²i.e., the 15th April, 1770.

³The Bengal Permanent Settlement Regulation, 1793.

of 1793.]

(Sec. 8.)

The land specified in this section, which may be adjudged liable to the payment of revenue, are to be considered as independent *taluks*.

8. *First*.—The amount of the revenue payable from the lands specified in section 7 is to be adjusted according to the following rules :

Rules for assessment under section 7.

Second.—If the grant shall have been made previous to the ¹[West Bengal] year 1178² or the [Fasli or] Wilayati year 1179 (according as the lands may be situated in ¹[West Bengal,] Bihar or [Orissa, the revenue to be paid to Government shall be equal to one-half of the annual produce of the land, calculating according to the rates at which other lands in the *pargana* of a similar description may be assessed.

If grant made previous to West Bengal year 1178, or [Fasli or] Wilayati year 1179.

If any part of the land shall be uncultivated, the proprietor is to be required to bring it into cultivation, and to pay such *vasad* or progressive increase, to be regulated with a reference to the reduced rate of the assessment on the cultivated lands, as the Board of Revenue, with the sanction of the ³[State] Government, may deem reasonable.

The produce of the land shall be ascertained by a survey and measurement, one-half of the expense attending which is to be defrayed by the proprietor, in the event of his agreeing to the *jama* required of him, and the other moiety by Government; or by such other mode of investigation as the Collector, with the sanction of the Board of Revenue, may judge advisable.

If the proprietor shall refuse to agree to the assessment, the lands are to be let in farm or held *khas*, under the rules prescribed in Regulation VIII, 1793⁴.

If the proprietor shall agree to pay the revenue that may be required of him, the amount shall not be liable to any variation in future; but he and his heirs and successors shall hold the lands at such fixed revenue for ever.

¹Substituted for the word "Bengal" by para. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

²i.e., the 15th April, 1770.

³Substituted for the word "Provincial" by para. 4(I) of the Adaptation of Laws Order, 1950.

⁴The Bengal Decennial Settlement Regulation, 1793.

(Sec. 9.)

If grant
made after
that time.

Third.—If the grant shall have been made subsequent to the ¹[West Bengal] year 1178² or the [Fasli or] Wilayati year 1179 [(according as the lands may be situated in ¹[West Bengal], Bihar or Orissa),] the revenue or jama to be paid to Government from the land shall be assessed agreeably to the rules prescribed in Regulation VIII, 1793³, for forming the settlement of estates paying revenue to Government, and the produce shall be ascertained, and the expense of the investigation defrayed, in the manner specified with regard to the lands in the preceding clause.

If the proprietor shall refuse to agree to the assessment, the lands are to be let in farm or held *khas*, under the rules for the decennial settlement.

If the proprietor shall agree to pay the revenue that may be required of him, the amount shall not be liable to any variation in future, but he and his heirs and successors shall hold the land at such fixed revenue for ever.

Rule for
fixing
revenue
on land
specified in
section 6.

9. The rules in the preceding section are to be held applicable to the lands specified in section 6; with this difference, that the proprietor, farmer, dependent *talukdar* or officer of Government to whom the revenue may be payable shall ascertain the produce of the lands without subjecting the grantee to any expense, and submit the accounts of it to the Collector, who shall fix the revenue to be paid from the lands in perpetuity, reporting the amount for the confirmation of the Board of Revenue, who are empowered, in cases in which it shall appear to them proper, to increase or reduce the amount.

If the proprietor shall agree to pay the revenue required of him, he and his heirs and successors shall hold the lands as a dependent *taluk*, subject to the payment of such fixed revenue for ever.

¹See foot-note 1 on page 59, ante.

²See foot-note 2 on page 59, ante.

³See foot-note 4 on page 49, ante.

(Sec. 10.)

10. All grants for holding land exempt from the payment of revenue whether exceeding or under one hundred bighas, that have been made since the 1st December, 1790, or that may be hereafter made, by any other authority than that ¹[of the State Government or, before the commencement of Part III of the Government of India Act, 1935², of the Central Government,] are declared null and void, and no length of possession shall be hereafter considered to give validity to any such grant, either with regard to the property in the soil or the rents of it.

Grants made since 1st December, 1790, declared void.

³And every person who now possesses, or may succeed to, the proprietary right in any estate or dependent taluk, or who now holds or may hereafter hold any estates or dependent taluk in farm of Government, or of the proprietor, or any other person, and every officer of Government appointed to make the collections from any estate or taluk held khas, is authorized and required to collect the rents from such lands at the rates of the pargana, and to dispossess the grantee of the proprietary right in the land, and to re-annex it to the estate or taluk in which it may be situated, without making previous application to a Court of Judicature, or sending previous or subsequent notice of the dispossession or annexation to any officer of Government;

nor shall any such proprietor, farmer or dependent talukdar be liable to an increase of assessment on account of such grants which he may resume and annul, during the term of the engagements that he may be under for the payment of the revenue of such estate or taluk when the grant may be so resumed and annulled.

The managers of the estates of disqualified proprietors, and of joint-undivided estates, are authorized and required to exercise, on behalf of the proprietors, the powers vested in proprietors by this section.

¹The words "of the Provincial Government or, before the commencement of Part III of the Government of India Act, 1935, of the Central Government" were substituted for the words "of the Governor General in Council or the Local Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and subsequently the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

²The Government of India Act, 1935, was repealed by the Constitution Act. Any reference to the repealed Act should be construed as a reference to the Constitution—see the Adaptation of Laws Order, 1950.

³So much of sec. 10 as authorises and requires proprietors and farmers of estates and dependent taluks (in cases in which grants for holding land exempt from the payment of revenue have been made subsequent to the 1st December, 1790) "of their own authority to collect the rents of such land and to dispossess the grantees of the proprietary right in the land and to re-annex it to the estate or taluk in which it may be situated", has been repealed by the Bengal Rent Act, 1859 (X of 1859), sec. 28.

(Secs. 11—15.)

How proprietors and farmers to recover revenue on lands specified in section 6.

11. Proprietors or farmers of land, or dependent *talukdars*, who may deem themselves entitled to the revenue of any land of the description of that specified in section 6 situated in their respective estates, farms or *taluks*, are to institute a suit for the recovery of it in the Court of *Diwani Adalat*.

Any proprietor or farmer of land, or dependent *talukdar*, or other person, subjecting such lands to payment of revenue, without having previously obtained a judicial decree for that purpose, shall be liable to be sued for damages by the parties injured.

Where estates or dependent *taluks* may be held *khas*, the right of suing for the recovery of the revenue from the lands specified in section 6 is to be considered as vested in the party to whom the collections from the estate or *taluk* may be payable.

If the estate or *taluk* be held *khas* by Government, the *tahsildar* or other officer is to sue for the revenue chargeable on such lands in the room of the proprietor, but under the directions of the Collector.

12 to 14. [*Suits by Collectors for the recovery of invalid lakhiraj.*—*Rep. by the Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819 (II of 1819).*]

Suits by or against Government.

15. The Collectors of the revenue are to defend all suits that may be instituted against Government, by any individual claiming a right to hold lands exempt from the payment of public revenue ; and such suits, and the suits which the Board of Revenue may direct the Collector to institute, are to be defended and prosecuted by the *vakil* of Government under the instructions of the Collector ;

and in the event of Government being cast, either wholly or in part, or if the Collector shall be dissatisfied with the decree in any respect, all the rules contained in section 30, Regulation XIV, 1793,¹ and the other sections in that Regulation respecting decisions given against a Collector in any *Zila Court*, in suits instituted against him by any proprietor or farmer of land, for sums of money demanded or actually received by him as arrears of revenue, are to be held applicable to such decree ;

¹Ben. Reg. XIV of 1793 was repealed by the Repealing Act, 1874 (XVI of 1874); but this reference is saved by the proviso to that Act.

of 1793.]

(Secs. 16—20.)

with this difference, that the suit, from the commencement of it, is to be defended or carried on at the expense of Government, and in the event of the Board of Revenue not deeming it proper to order an appeal against the decision of the Zila Court to be preferred to the ¹[State] Court of Appeal, or against the decision of the ¹[State] Court to the *Sadar Diwani Adalat*, in the event of their ordering the cause to be appealed to the ¹[State] Court, and of its being given against them therein, they are to report their reasons, in both cases, for not preferring the appeal, to the ¹[State] Government, who will direct the cause to be appealed, or not, in either case as may appear to [it]² proper.

16. [Courts to award costs in cases of groundless prosecution.]—*Rep. by the Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819 (II of 1819).*

17. If it shall appear to any Court of Judicature during the course of a trial that a grant for land to be held exempt from the payment of revenue, dated prior to the 1st December, 1790, has been forged, or that the name of the original grantee has been erased and any other name substituted, or that any name not in the original grant has been inserted, or that the denomination of the tenure in the original grant has been erased or altered, or that the date of the grant has been changed or that the grant has been ante-dated, the grant shall be adjudged null and void, as far as regards the exemption of the land from the payment of revenue, and the land shall be subjected to the payment of revenue accordingly.

Grants forged or altered in any respect or ante-dated, declared void.

18. [Persons concerned in fraud liable to criminal prosecution.]—*Rep. by the Repealing Act, 1874 (XVI of 1874).*

19. [Revenue to be paid from date of first decree for resumption.]—*Rep. by the Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819 (II of 1819).*

20. Grants of land, which from the terms of the grant or the nature of the tenure are hereditary, and are declared valid by this Regulation, or which have been or may be confirmed by the ³[Government], or any of its officers possessing competent authority to confirm them, are declared transferable by gift, sale or otherwise ;

Transfer of grants.

¹Substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

²The word "him," in the original text, is to be read as if the word "it" were substituted therefor—see the Amending Act, 1903 (I of 1903).

³Substituted for the word "Crown" by para 4(1) of the Adaptation of Laws Order, 1950.

[Ben. Reg. XIX

(Secs. 21 - 26.)

and all persons succeeding to such grants, by whatever mode, are required to register their names in the office of the Collector within six months after they may succeed to the grant.

But all such purchases are to be considered as made at the risk of the purchaser ; and in the event of the grant not proving to be hereditary, or not to have been made or confirmed by the ¹[Government], or its officers possessing competent authority, the transfer is not to preclude the land from being subjected to the payment of revenue under this Regulation.

21, 22. [*Payment of revenue where to be made; register of lands held exempt from revenue prior to 1st December, 1790.*—Rep. by the Land Registration Act, 1876 (Ben. Act VII of 1876).

23. [*Form for periodical Register.*—Rep. by the Repealing Act, 1868 (VIII of 1868).

Time for
registry of
grants.

24. All persons actually holding lands exempt from the payment of public revenue, whether exceeding or under one hundred *bighas*, in virtue of grants made previous to the 1st December, 1790, and whether made or confirmed by the Government of the country for the time being, or any other authority, shall be allowed one year from the date of the publication prescribed in the following section to register the required particulars respecting their grants in the office of the Collector of the revenue of the *zila* in which the lands may be situated.

25. [*Publication to be made, requiring all persons to register grants.*—Rep. by the Amending Act, 1903 (I of 1903).

Lands not
registered
within
prescribed
time.

26. If any person in possession of any such grant of land now held exempt from the payment of revenue shall omit to register it by the time prescribed in the publication, together with as accurate a detail of the particulars thereby required as he may be able to furnish, the land included in the grant shall, by such omission, become subject to the payment of revenue in the same manner as if it had been adjudged liable to the payment of revenue by a final decree of a Court of Judicature, and the Collector, if the land shall exceed one hundred *bighas*, shall proceed to assess the lands accordingly ; and, if it shall be under one hundred *bighas*, the party to whom the revenue of the land may be payable under section 6 is empowered to assess the lands as therein directed.

¹Su for the word "Crown" by para. 4(I) of the Adaptation of Laws Order, 1960.

of 1793.

(Secs. 27—35.)

Government, however, reserves to ¹[itself] the power of admitting any grant upon the register after the expiration of the prescribed time, in the event of the possessor of the land showing good and sufficient cause, to ²[its] satisfaction, for not having registered it within the limited period, and the Board of Revenue are to report to the ¹[State] Government every case in which persons who may have omitted to register their grants as required may appear to them entitled to have their grants admitted upon the register.

27. After the expiration of the period limited for registering grants, all grants not registered within the prescribed time, and which may not be subsequently admitted on the register by the ¹[State] Government, are declared invalid, as far as regards the exemption from the payment of revenue, and the land shall be assessed with revenue as directed in section 26.

Grants not registered within prescribed period, etc., invalid,

28. It is expressly declared, however, that the registry of grants under this Regulation is not to be considered as an admission of the right of the person in whose name they may be registered to the property in the soil, or of his title to hold the lands exempt from the payment of revenue.

Effect of registry of lands,

Any person will be at liberty to sue him in the Diwani Adalat for the former, and he will be liable to be sued for the recovery of the latter by the Collector with the sanction of the Board of Revenue in the event of it appearing to that Board that the lands are liable to the payment of revenue.

29 to 34. *[Preparation of registers; counterpart registers; entries regarding exempted lands and documents respecting same.]—Rep. by the Land Registration Act, 1876 (Ben. Act VII of 1876).*

35. *[How separations and annexations of exempted lands are to be notified to the Courts.]—Rep. by the Amending Act, 1903 (I of 1903).*

¹Substituted for the word "Provincial" by para. 4(I) of the Adaptation of Laws Order, 1950.

²This word was substituted for the word "himself" by paragraph 5(2) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³This word was substituted for the word "his", *ibid.*

[Bengal. Reg. XIX of 1793.]

(Secs. 36—49.)

36 to 46. [Registers of intermediate resumptions, and periodical registers; correction of errors in same; registry of disputed grants; liability of holders of grants to furnish information; to whom copies of periodical registers are to be sent; penalty for receiving bribes in connection with the registry of grants.]—Rep. by the Land Registration Act, 1876. (Ben. Act VII of 1876).

Rules
respecting
life-grants
applicable
to grants
for a term

47. All the rules in this Regulation respecting lands now held, or that may be claimed to be held, exempt from the payment of revenue, under life-grants made previous to the date of the Company's accession to the Diwani, are to be considered equally applicable to grants made previous to that date for a term only.

Saving of
grants
made or
confirmed
by late
superin-
tendents
of the
bazi-zamin
daftar;

48. No part of this Regulation is to be considered to annul any grants for holding land exempt from the payment of revenue, made or confirmed by the late superintendents of the bazi-zamin daftar in ¹[West] Bengal, in virtue of the powers vested in them.

and of
badshahi
grants.

49. Nor to extend to jagir, altamgha, mudadmash, aima or other grants of land termed badshahi or royal, and held, or stated to be held, under a royal farman.

The rules applicable to such grants are contained in Regulation XXXVII, 1793.²

¹Substituted for the word "Bengal" by para. 5(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

²The Bengal Revenue-free Lands (Badshahi Grants) Regulation, 1795.

Bengal Regulation XXXVII of 1793

[The Bengal Revenue-free Lands (Badshahi Grants) Regulation, 1793.]

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4. Questions regarding proprietary right to be determined in *Diwani Adalat*.
5. Collectors to attach revenue of lands in escheated grants.
7. to 9. (*Repealed*.)
10. Suits against Government by persons claiming to hold lands paying revenue exempt from revenue under *Badshahi* grants.
11. (*Repealed*.)
12. Grants forged or altered in any respect, or ante-dated, declared void.
13. to 14. (*Repealed*.)
15. Transfer of grants.
16. to 18. (*Repealed*.)
19. Time for registry.
20. (*Repealed*.)
21. Grants not registered within prescribed time liable to resumption.
22. Grants not registered considered forfeited.
23. Effect of registry of grants.
24. to 41. (*Repealed*.)
42. Regulation not to extend to grants not *Badshahi*.

Bengal Regulation XXXVII of 1793

[The Bengal Revenue-free Lands (Badshahi Grants) Regulation, 1793.]

SHORT TITLE GIVEN	Act I of 1903.
MODIFIED BY	{ Ben. Regn. XIII of 1825. Ben. Regn. XIV of 1825.
REPEALED IN PART	{ Ben. Regn. II of 1819. Act XVI of 1874. Ben. Act VII of 1876.
REPEALED IN PART AND AMENDED	Act I of 1903.
ADAPTED	(a) The Government of India (Adap- tation of Indian Laws) Order, 1937. (b) The Adaptation of Laws Order, 1950.

(1st May, 1793.)

A. Regulation for re-enacting, with modification, the rules passed on the 23rd April, 1788, and subsequent dates, for trying the validity or the titles of persons holding or claiming a right to hold altamgha, Jagir and other lands exempt from the payment of public revenue, under grants termed badshahi or royal, and for determining when certain grants of that description shall be considered to have expired; and for fixing the amount of the public revenue to be assessed upon the lands the grants for which may expire or be adjudged invalid.

1. By the ancient law of the country the ruling power is entitled to a certain proportion of the produce of every bigha of land, unless it transfers its right thereto for a term or in perpetuity.

Preamble.

As a necessary consequence of this law every grant or alienation of Government's proportion of the produce of lands without its sanction was considered null and void.

Had the validity of such grants or alienation been admitted it is obvious that the public revenue would have been liable to gradual diminution.

Under the Native Government grants were occasionally made of the Government's share of the produce of lands, for the support of the families of persons who had performed public services, for religious or charitable purposes, for maintaining troops and for other services.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Regulation was declared, by the Cuttack Land-revenue Regulation, 1805 XII of 1805), sec. 25, to be in force, with modifications, in the Parganas of Pataspur and Bograi in the district of Midnapore in West Bengal.

The Regulation was afterwards declared, by the Laws Local Extent Act, 1874 (XV of 1874), sec. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled District.

It has been declared, by notification under the Scheduled Districts Act, (XIV of 1874), sec. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

[Ben. Reg. XXXVII

(Sec. 1.)

The British Government continued to the grantees or their heirs such of these grants as were hereditary, and were made before the date of the Company's accession to the *Diwani*, provided the grantees or their heirs had obtained possession previous to that date ; but those grants which were for life only have been invariably considered as resumable on the death of the grantees.

No complete register of these grants having been formed on the Company's accession to the *Diwani*, nor subsequent to that period, many persons have retained possession of lands under fabricated or ante-dated grants, or have succeeded to life-grants on the demise of the original grantee or former possessor, without the sanction of Government.

The Governor General in Council, deeming it incumbent on him to resume the public dues from lands held under invalid tenures, as well as the revenue of all lands the grants for which might expire, and as the proprietors of estates were not entitled to collect such of the public dues from the lands included in their estates as Government had judged it advisable to transfer to individuals, or to resume those which had been alienated or were appropriated without authority, the amount of the revenue of the lands having in both cases been excluded from the assets on which the settlement was to be concluded, it was made a rule at the time of forming the decennial settlement, and which has been re-enacted by section 36, Regulation VIII, 1793¹, that the *jama* assessed upon the estates of individuals was to be considered as exclusive and independent of all existing *lakhrāj* lands, whether exempted from the *khirāj* or public revenue, with or without due authority ;

¹The Bengal Decennial Settlement Regulation, 1793.

(Sec. 1.)

of 1793.]

and by the third clause of the seventh article of the Proclamation contained in Regulation 1, 1793¹, which specifies the conditions under which Government declared the decennial settlement permanent, it is expressly stipulated that the Governor General in Council will impose such assessment as he may deem equitable on all lands at present alienated and paying no public revenue which have been or may be proved to be held under illegal or invalid titles.

The Governor General in Council however, at the same time that he is desirous of recovering the public dues from lands held under invalid tenures, is equally solicitous that persons holding lands under grants that are declared valid should be secured in the quiet possession and enjoyment of them.

With this view, and to obviate all injustice or extortion in the inquiry into the titles of persons possessing lands under such grants, he has resolved that all claims of the public for the resumption of such grants (provided the grantees or persons in possession register their grants as required in this Regulation) shall be tried in the Courts of Judicature, that no such grants may be resumed until the title of the grantee or present possessor shall have been adjudged invalid by a final judicial decree.

Upon the above grounds, and with a view to facilitate the resumption of invalid grants, as well as to prevent any grants being hereafter made without the authority of Government, and further that Government and its officers may at all times have in their possession a correct register of the lands in the several *zilas* held exempt from the payment of revenue under *badshahi* grants, the following rules, containing the rules passed on the 23rd April, 1788, and subsequent dates, with modifications, have been enacted.

¹The Bengal Permanent Settlement Regulation, 1793.

[Ben. Reg. XXXVII

(Sec. 2.)

*Badshahi
grants
made
before
Diwani.*

2. First.—*Altamgha, jagir, aima, madadmash* or other *badshahi* grants for holding land exempt from the payment of revenue, made previous to the 12th August, 1765, the date of the Company's accession to the *Diwani*, shall be deemed valid, provided the grantee actually and *bona fide* obtained possession of the land so granted previous to that date and the grant shall not have been subsequently resumed by the officers or the orders of Government.

If it shall be proved to the satisfaction of the Court that the grantee did not obtain possession of the land so granted previous to the 12th August, 1765, or that he did obtain possession of it prior to that date, but that it has been since resumed by the officers or the orders of Government, the grant shall not be deemed valid.

*Procedure
in case of
doubts
as to
authority
of Officer
having
resumed
grants.*

Second.—In the event, however, of a claim being preferred by any person to hold land exempt from the payment of revenue, under a *badshahi* grant made previous to the date of the Company's accession to the *Diwani*, and on it being proved to the satisfaction of the Court in which the suit may be instituted in the first instance, or to which it may be appealed, that the grantee held the land exempt from the payment of revenue, but that it was subjected to the payment of revenue posterior thereto by an officer of Government, and the Court shall entertain doubts as to the competency of such officer, under the powers vested in him, to resume the grant and subject the lands to the payment of revenue, the Court shall suspend its judgment and report the circumstances to the ¹[State] Government, to whom a power is reserved of determining whether such officer was or was not competent to resume the grant; and, upon receiving the determination of the ¹[State] Government, the court is to decide accordingly.

No such claim, however, to hold exempt from the payment of revenue, land that may have been subjected to the payment of revenue for the twelve years preceding the date on which the claim may be instituted, shall be heard by any *Zila* or City Court, unless the claimant can show good and sufficient cause for not having preferred the claim to a competent authority within the twelve years * * *

¹Substituted for the word "Provincial" by para. 4(I) of the Adaptation Order, 1960.

²The words and figures "and proceeded in it as required by section 14, Regulation 8, 1793", which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

of 1793.]

(Secs. 3, 4.)

Third.—But no part of the two preceding clauses is to be construed to empower the Courts to adjudge any person, not being the original grantee entitled to hold land paying revenue to Government, exempt from the payment of revenue, under a *jagir* or other grant made previous to the Company's accession to the *Diwani*, where the grant may expressly specify it to have been given for the life of the grantee only; or, supposing no such specification to have been made in the grant, or the grant not to be forthcoming, where the grant, from the nature and denomination of it, shall be proved to be a life-tenure only, according to the ancient usages of the country.

Persons
not being
original
grantees
not entitled
to hold
lands free;

Fourth.—Nor to entitle the heirs of any person now holding lands exempt from the payment of public revenue under a *jagir* or other *badshahi* life-grant made previous to the *Diwani* to succeed to and hold such land exempt from the payment of revenue upon the demise of the present possessor; where the grant may expressly specify it to have been given for the life of the grantee only, or supposing no such specification to have been made in the grant, or the grant not to be forthcoming, where from the nature and denomination of the grant it shall be proved to be a life-tenure only, according to the ancient usages of the country.

nor also
heirs of
persons
now posses-
sing ex-
empted
lands
under life-
grants
made
previous
to *Diwani*.

Fifth.—The present possessors of lands now exempt from the payment of revenue under such *jagir* or other life-grants made previous to the *Diwani* and declared by the preceding clause not to be hereditary, are prohibited from selling or otherwise transferring them, or mortgaging the revenue of the lands for a longer period than their own lives, and all such transfers and mortgages which have been or may be made are declared illegal and void.

Present
possessors
not to
transfer or
mortgage
grants.

3. First.—All *badshahi* grants for holding land exempt from the payment of revenue, which may have been made since the 12th August, 1765, by any other authority than that of Government, and which may not have been confirmed by Government, or by any officer empowered to confirm them, are declared invalid.

Certain
grants
made or
confirmed
since
Diwani
declared
invalid.

Second.—If doubts shall be entertained by any Court as to the competency of the authority of any officer to confirm any such grant, the Court is to suspend its judgment and report the circumstances of the case to the ¹[State] Government, to whom a power is reserved of determining finally whether the officer possessed competent authority to confirm the grant, or otherwise, and the Court, upon receiving the determination of the ¹[State] Government, shall decide accordingly.

Procedure
in cases of
doubt of
authority
of officer
confirming
grant.

¹Substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

[Ben. Reg. XXXVII]

(Secs. 4—10.)

Questions regarding proprietary right to be determined in *Diwani Adalat*.

4. It is to be understood that this Regulation respects only the Government proportion of the revenue arising from lands held or claimed to be held under *badshahi* grants, and whether Government is entitled to resume or retain such revenue or otherwise.

Every dispute or claim regarding the *zamindari* or proprietary right in lands included in any grant is to be considered as a matter of a private nature between the contending parties, and is to be determined in the *Diwani Adalat*.

Collectors to attach revenue of lands in escheated grants.

5. When a *jagir* or other life-grant shall escheat ¹[to the Government], the Collector is immediately to attach the revenue of the lands and report the circumstance to the Board of Revenue, who are to obtain the orders of the ²[State] Government regarding the resumption of the grant.

Assessment of lands included in resumed grants.

6. When any *badshahi* grant shall be resumed or expire, or escheat ¹[to the Government], the revenue to be paid ²[to the Government] from the lands included in it shall be assessed, and the settlement made in perpetuity, agreeably to the rules for the decennial settlement contained in Regulation VIII, 1793³, with the person possessing the *zamindari* or proprietary right in the lands, whoever he may be.

If the proprietor shall refuse to pay the *jama* demanded of him, the land shall be held *khas* or let in farm, as directed in that Regulation.

7. to 9. [Suits by Collectors for the recovery of invalid *lakhiraj*.]—Rep. by the Bengal Land-revenue Assessment Regulation, 1819 (II of 1819).

Suits against Government by persons claiming to hold lands paying revenue exempt from revenue under *badshahi* grants.

10. Any person having a claim to hold lands paying revenue exempt from the payment of revenue under a *badshahi* grant must institute his claim against Government, who alone can be the defendant in such suits, in the *Diwani Adalat* of the *zila*, in the same manner as in cases where individuals may claim a right to hold lands paying revenue exempt from the payment of revenue under grants not of the description of those termed *badshahi*, in virtue of Regulation XIX, 1793⁴.

The Collectors of the revenue are to defend all such suits as may be instituted against Government, and such suits, and the suits which the Board of Revenue may direct the Collector to institute are to be defended or prosecuted by the *shukil* of Government, under the instructions of the Collector.

¹The words "to the Crown" were substituted for the words "to Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "Government" was subsequently substituted for the word "Crown" by para. 4(I) of the Adaptation of Laws Order, 1950.

²Substituted for the word "Provincial" by para. 4(I) of the Adaptation of Laws Order, 1950.

³The Bengal Decennial Settlement Regulation, 1793.

⁴The Bengal Revenue-free Lands (Non-Badshahi Grants) Regulation, 1799.

of 1793.

(Secs. 11—15.)

and in the event of Government being cast, either wholly or in part, or if the Collector shall be dissatisfied with the decree in any respect, all the rules contained in section 30, Regulation XIV, 1793¹ and the other sections in that Regulation respecting decisions given against a Collector in any zila Court in suits instituted against him by any proprietor or farmer of land, for sums of money demanded or actually received by him as arrears of revenue, are to be held applicable to such decree, with this difference, that the suit, from the commencement of it, is to be defended, or carried on at the expense of Government, and in the event of the Board of Revenue not deeming it proper to order an appeal from the decision of the Zila Court to be preferred² * * * *

to the Sadar Diwani Adalat,³ * * * they are to report their reasons⁴ * * * for not preferring the appeal to the⁵ [State] Government, who will direct the cause to be appealed or not, in either case, as may appear to⁶ [it] proper.

11. [Courts to award costs in case of groundless prosecution.]—Rep. by the Bengal Land-revenue Assessment (Resumed Lands), Regulation, 1819 [II of 1819].

12. If it shall appear to any Court of Judicature, during the course of a trial, that a grant has been forged, or that the name of the original grantee has been erased and any other name substituted, or that any name not in the original grant has been inserted, or that the denomination or the terms of the tenure in the original grant have been erased or altered, or that date of the grant has been changed or that the grant has been ante-dated, the grant shall be adjudged null and void.

Grants forged or altered in any respect or ante-dated, declared void.

13. [Persons concerned in frauds liable to criminal prosecution.]—Rep. by the Repealing Act, 1874 (XVI of 1874).

14. [Revenue to be paid from date of first decree of resumption.]—by the Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819 (II of 1819).

15. Altamgha, aima and madadmash grants are to be considered as hereditary tenures.

Transfer of grants.

¹Ben. Reg. XIV of 1793 was repealed by the Repealing Act, 1874 (XVI of 1874), but this reference is saved by the proviso to that Act.

²The words "to the Provincial Court of Appeal, or from the decision of the Provincial Court," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

³The words "in the event of their ordering the cause to be appealed to the Provincial Court, and of its being given against them therein," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

⁴The words "in both cases," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

⁵Substituted for the word "Provincial" by para. 4(i) of the Adaptation of Law Order, 1950.

⁶The word "him," in the original text, is to be read as if the word "it" were substituted therefor—see the Amending Act, 1903 (I of 1903).

The Bengal Revenue-free Lands

[Ben. Reg. XXXVII

(Secs. 16—24.)

These and other grants, which from the terms or nature of them may be hereditary and are declared valid by this Regulation, or which have been or may be confirmed by ¹[the Government], or any of its officers possessing competent authority to confirm them, are declared transferable by gift, sale or otherwise, and all persons succeeding to such grants, by whatever mode, are required to register their names in the office of the Collector, within six months after they may succeed to the grant.

But all such purchases are to be considered as made at the risk of the purchaser ; and in the event of the grant not proving to be hereditary, or not to have been made or confirmed by ¹[the Government], or its officers possessing competent authority, the transfer is not to preclude the land from being subjected to the payment of revenue under this Regulation.

Jagirs are to be considered as life-tenures only, and with all other life-tenures are to expire with the life of the grantee, unless otherwise expressed in the grant.

16. to 18. [*Record of lands which may become liable to, or exempt from, the payment of revenue ; register of badshahi grants ; form of periodical register.*—Rep. by the Land Registration Act, 1876 (Ben. Act VII of 1876).

19. All persons actually holding lands exempt from the payment of public revenue under *badshahi* grants, and whether made or confirmed by the Government of the country for the time being or by whatever authority, shall be allowed one year from the date of the publication prescribed in the following section, to register the required particulars respecting their grants in the office of the Collector of the Revenue of the *zila* in which the lands may be situated.

20. [*Publication to be made, requiring all persons to register grants.*—Rep. by the Amending Act, 1903 (I of 1903).

21. If any person in possession of any such grant that may be now in force shall omit to register it by the time prescribed in the publication, together with as accurate a detail of the particulars thereby required as he may be able to furnish, the grant shall, by such omission, become subject to resumption, and the lands shall become liable to the payment of revenue to Government.

The ¹[State Government], however, reserves to ²[itself] the power of admitting any grant upon the register after the

¹The words "the Crown" were substituted for the words "the British Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937 and the word "Government" was subsequently substituted for the word "Crown" by para 4(1) of the Adaptation of Laws Order, 1950.

²The words "Provincial Government" were substituted for the words "Governor General in Council" by para. 3 and Schedule XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was subsequently substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

³This word was substituted for the word "himself" by paragraph 5(2) of the Government of India (Adaptation of Indian Laws) Order, 1937.

Time for
registry.

Grants not
registered
within
prescribed
time
liable to
resump-
tion.

(*Badshahi Grants*) Regulation, 1793.

of 1793.]

(Secs. 22—34.)

expiration of the prescribed time, in the event of the possessor showing good and sufficient cause, to ¹[its] satisfaction, for not having registered it within the limited period, and the Board of Revenue are to report to the ²[State Government] every case in which persons who may have omitted to register their grants as required, may appear to them entitled to have their grants admitted upon the register.

22. After the expiration of the period limited for registering grants, all grants not registered within the prescribed time, and which may not be subsequently admitted on the register by the ³[State Government], are declared forfeited, and the lands shall be assessed with revenue, agreeably to the rules prescribed for the decennial settlement.

Grants not registered considered forfeited.

23. It is expressly declared, however, that the registry of a grant under this Regulation is not to be considered as an admission of the right of the person in whose name it may be registered, to the property in the soil, nor of the validity of his grant.

Effect of registry of grants.

Any person will be at liberty to sue in the *Diwani*⁴ *Adalat* for the former, and he will be liable to be sued for the resumption of the grant by the Collector, with the sanction of the Board of Revenue, in the event of it appearing to that Board that the grant is invalid.

24. [Preparation of register upon expiration of period limited for registry of grants.]—Rep. by the Land Registration Act, 1876 (Ben. Act VII of 1876).

25. [Preparation of second periodical register.]—Rep. by the Repealing Act, 1874 (XVI of 1874).

26. to 29. [Counterpart register by whom to be kept, in what native languages; manner of recording resumptions, etc.; documents respecting grants by whom to be furnished.]—Rep. by the Land Registration Act, 1876 (Ben. Act VII of 1876).

30. [Separations and annexations of exempted lands how notified to Courts.]—Rep. by the Amending Act, 1903 (I of 1903).

31. to 33. [Register of intermediate occurrences not to fall into arrear; counterpart of same by whom to be kept; manner of correcting errors in registers.]—Rep. by the Land Registration Act, 1876 (Ben. Act VII of 1876).

34. [Manner of correcting errors in counterpart registers.]—Rep. by the Repealing Act, 1874 (XVI of 1874).

¹This word was substituted for the word "his," by paragraph 5(2) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²The words "Provincial Government" were substituted for the words "Governor General in Council", by para. 3 and Schedule XIV, *ibid.* and the word "State" was subsequently substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

[Ben. Reg. XXXVII of 1793.]

(Secs. 35-42.)

35 to 41. [Registry in case of proprietary right being under litigation; penalty for not furnishing information; to whom copies of periodical registers are to be sent; registers to be carefully preserved; from what materials the periodical register commencing with 1207 and subsequent registers, are to be formed; penalty for receiving bribes.]—Reg. by the Land Registration Act, 1876 (Ben. Act VII of 1876).

Regulation
not to
extend to
grants not
badshahi.

42. No part of this Regulation is to be considered to extend to lands held, exempt from the payment of public revenue under grants not being of the description of those termed badshahi or royal.

The rules applicable to such grants are contained in Regulation XIX, 1793¹.

¹The Bengal Revenue-free Lands (Non-Badshahi Grants) Regulation 1793.

Regulation XXXVIII of 1793

[The Indian Civil Service (Bengal) Loans Prohibition Regulation, 1793.]¹

SHORT TITLE GIVEN

Act V of 1897.

REPEALED IN PART

Act VIII of 1868.

Act XVI of 1874.

Act XII of 1891.

Act I of 1903.

ADAPTED

(a) The Government of India
(Adaptation of Indian Laws)
Order, 1937.

(b) The Adaptation of Laws
Order, 1950.

(1st May, 1793.)

*A regulation for re-enacting, with modifications, such part of the Rule passed on the 27th June, 1787, as prohibits covenanted Civil Servants of the ²[Government] employed in the administration of justice or the collection of the public revenue lending money to zamindars, independent talukdars or other actual proprietors of land, or dependent talukdars or farmers of land holding farms immediately of Government, or the under-farmers or raiyats of the several descriptions of proprietors and farmers of land above-mentioned, or their respective sureties³ * * **

1. At an early period after the establishment of the British Government in this country the servants of the Company employed in the administration of justice and the collection of revenue were prohibited from lending money to the landholders and farmers, and others concerned in the collection or payment of the revenue, in order to guard against the abuses that the powers with which they were invested would have enabled them to practise, had they been permitted to engage in such transactions with individuals subject to their official control and authority.

Preamble.

This rule was incorporated with the Judicial Regulations passed on the 5th July, 1781, and has since continued in force.

* * * * *

The rules⁴ abovementioned are hereby re-enacted with modifications.

¹SHORT TITLE.—This short title was given by the Amending Act, 1897 (V of 1897).

²LOCAL EXTENT.—Ss. 1 and 2 of this Regulation have been declared, by the Laws Local Extent Act, 1874 (XV of 1874), sec. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

The same sections have been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), sec. 3, to be in force in West Jalpaiguri and the Western Duars, in the Jalpaiguri district.

³This word was substituted for the word "Crowd" by para. 4(1) of the Adaptation of Laws Order, 1950.

⁴The remainder of the title, which was repealed by the Amending Act, 1891 (XII of 1891), is omitted.

⁵Portion of sec. 1 which was repealed by the Amending Act, 1891 (XII of 1891), is omitted.

[Ben. Reg. XXXVIII of 1793.]

(Secs. 2—6.)

Covenanted
servants
prohibited
lending
money to
proprietors,
etc.,
of land.

2. The Judges and Magistrates of the Zila¹ * Courts
* * * and their Assistants, or other officers being covenanted servants of the [Government], and the Collectors of the revenue and their Assistants, are prohibited lending money, directly or indirectly, to any proprietor or farmer of land, or dependent talukdar, or under-farmer or raiyat, or their sureties ; and all such loans as⁴ * may be hereafter made are declared not recoverable in any Court of Judicature.

3. to 6. [*Europeans possessing land liable to be dispossessed; European mortgagees not to have possession of land; land held by Europeans to be measured; annual statements of land held by Europeans to be sent to Board of Revenue.*]
Rep. by the Repealing Act, 1868 (VIII of 1868).

¹The words "and City", which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

²The words "the Judges of the Provincial Courts of Appeal and the Courts of Circuit, and the Registers to their respective Courts", which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

³Substituted for the word "Crown" by para. 4(I) of the Adaptation of Laws Order, 1950.

⁴The words "have been made in opposition to the repeated prohibitions of Government or which," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

Bengal Regulation III of 1794¹

(The Bengal Revenue-officers Regulation, 1794.)

SHORT TITLE GIVEN

Act I of 1903.

Act XVI of 1874.

Act XII of 1876.

REPEALED IN PART

Ben. Act VII of 1880.

Act XII of 1891.

Act I of 1903.

ADAPTED

(a) The Government of India
(Adaptation of Indian Laws)
Order, 1937.

(b) The Adaptation of Laws
Order, 1950.

(14th March, 1794.)

A Regulation^{2} * * * for prescribing the process by which tahsildars are to demand payment of arrears; and for enabling the Collectors to recover from^{3*} officers employed under them public^{4*} * papers which they may^{5*} * * retain^{6*}.*

I to II. [*Revenue when payable; restriction on confinement for arrears; demand of arrears; sale; penalty on defaulters; recovery of takavi; attachment of lands; resistance to attachment; partial repeal of Reg. XIV of 1793.*]*—Rep. by the Repealing Act, 1874 (XVI of 1874).*

12. [*Recovery by proprietors and farmers of land of sums exacted from them beyond their engagements.*]*—Rep. by the Public Demands Recovery Act, 1880 (Ben. Act VII of 1880).*

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Regulation (ss. 13, 16 to 18 and 20) has been declared by the Laws Local Extent Act, 1874 (XV of 1874), sec. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), sec. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

²The words "for exempting proprietors of land (with certain exceptions) from being confined for arrears of revenue," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

³The word "Native" was omitted by para. 3 and the Sixth Schedule of the Adaptation of Laws Order, 1950.

⁴The words "money or," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

⁵The words "embezzle or," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

⁶The words "and for expediting the trial of causes relating to the public revenue or the rents of individuals," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

(Secs. 13—16.)

How
tahsildars
or other
public
officers are
to require
payment
of arrears
from pro-
prietors or
farmers
paying
revenue to
them.

13. When arrears shall become due from proprietors or farmers of land, whose revenue may be made payable to a *tahsildar* or other officer appointed by ¹[the State Government] to collect it, such officer is to demand the payment of the arrears by the same process as Collectors are required to observe in requiring the discharge of arrears ²* * *.

If the defaulter shall not liquidate the arrears by the prescribed period, the *tahsildar* or other officer is to report the amount of the arrear to the Collector, who is to proceed to the recovery of it by the same process as he is directed to observe in recovering arrears due from proprietors or farmers paying revenue immediately to the treasury of the *zila*.

14, 15. [Imprisonment under Reg. XIV of 1793; security for personal appearance of Native officers.]—Rep. by the Repealing Act, 1874 (XVI of 1874).

Collectors
how to
proceed to
recover
papers in pos-
session of
officers.

³16. If a Collector shall have a claim, on the part of ¹[the State Government], on any of the ⁴* * * officers described in the preceding section, for ⁵* * * papers belonging to ¹[the State Government], he is to require ⁶* * * the delivery of the papers, by a writing under his official seal and signature and the signature of his ⁷* * * head ⁴* officer of his *dafter* for the time

¹The words "Provincial Government" were substituted for the word "Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was subsequently substituted for the word "Provincial" by para. 4(I) of the Adaptation of Laws Order, 1950.

²The words and figures "by section 3, Regulation 14, 1793," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

³Sec. 16, so far as it relates to the recovery of money belonging to the Government, was repealed by the Public Demands Recovery Act, 1880 (Ben. Act VII of 1880).

⁴The word "Native" was omitted by para. 3 and the Sixth Sch. of the Adaptation of Laws Order, 1950.

⁵The words "a balance of accounts, or money or," which were repealed by the Amending Act, 1908 (I of 1908), are omitted.

⁶The words "the payment of the money or," which were repealed by the Amending Act, 1908 (I of 1908), are omitted.

⁷The words "*diwan* or other," which were repealed by the Repealing Act, 1876 (XII of 1876), are omitted.

of 1794.]

(Sec. 17.)

being specifying ¹* * * the particular papers required, and the date and place that may be fixed for the delivery of the ²* * papers.

If the officer shall not ³* * * deliver up the papers by the limited time, the Collector is empowered to apprehend him, and convey him to the gaol of the *Diwani Adalat* of the *zila*, the Judge of which court shall detain him in confinement until ⁴* * * he shall have delivered up the papers.

In the event of the death of any such officer, the surety is to be exonerated from all responsibility, and the Collector is to proceed against his heirs, by a regular suit in the Court to which they may be amenable, for any claims which ⁶[the State Government] may have upon the deceased.

The suit is to be carried on by the *vakil* of ⁶[the State Government] and at the public expense, and the rules in Regulation XIV, 1793⁷, regarding suits so carried on by the Collectors, are to be held applicable to it.

⁸17. If any such * officer, who may have retained public ⁹* * papers in his possession, shall abscond or not be forthcoming, the Collector may proceed against the surety upon his engagement, or apprehend the offender and commit him to prison, if he be within the limits of the *zila*; or, if he shall have taken refuge in any other *zila* ¹⁰* * and the Collector shall deem it necessary to require his personal attendance that he may proceed against him instead of his surety, the Collector is to apply to the Judge of the *zila* to request the Judge within whose jurisdiction the officer may be or reside, to cause him to be apprehended.

Collectors how to proceed where officers abscond or are not forthcoming.

¹The words "the amount of the money or," which were repealed by the Jting Act, 1903 (1 of 1903), are omitted.

²The words "money or," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

³The words "discharge the money or," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

⁴The words "the sum demanded of him shall be discharged or," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

⁵Certain clauses as to attachment and sale, of property, which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

⁶See foot-note 1 on page 82, ante.

⁷Ben. Reg. XIV of 1793 was repealed by the Repealing Act, 1874 (XVI of 1874); but this reference is saved by the proviso to that Act.

⁸Sec. 17 and 18, so far as they relate to the recovery of money belonging to the Government, were repealed by the Public Demands Recovery Act, 1880 (Ben. Act VII of 1880).

⁹The word "Native" was omitted by para. 3 and the Sixth Sch. of the Adaptation of Laws Order, 1950.

¹⁰The words "or in either of the cities of Patna, Dacca, or Murshidabad," which were repealed by the Repealing Act, 1876 (XII of 1876), are omitted.

[Ben. Reg. III of 1794.]

(Secs. 18—22.)

The Judge to whom the application may be made is to convey the officer in safe custody to the gaol of the zila from which he may have absconded.

Collector
how to
proceed in
case of
officer
abscond-
ing without
having
adjusted
accounts,
or not
attending
for that
purpose.

¹18. If a Collector shall have occasion to require any such officer to attend to adjust his accounts, that the sum due from him may be ascertained, and he shall not attend upon being required by writing to that effect, under the official seal and signature of the Collector to be fixed up in his *cutcherry* and at the place in the zila at which the officer may have last resided, the Collector is empowered to prepare the most accurate statement, that he may be able, of the ²* * * papers in the possession of such officer, and proceed against the surety, upon his engagement, for the ³* * * papers, in the same manner as if the accounts had been adjusted, and the list of the papers prepared in the presence of the officer ;

or he may cause the officer to be apprehended by his own authority under section 16, if he be within the limits of the zila or, if he shall have taken up his abode in any other zila, ⁴* * * by application to the Judge, in the manner directed in section 17.

If it should afterwards appear, upon inquiry before the Court ⁵* * * that the papers required were not in his possession, the Collector shall not be liable to pay any damages for having confined him, and all costs that may be incurred in the suit or inquiry shall be paid by the officer,

19. [*Officers or sureties confined for money-demand to be released in certain cases.*—Rep. by the Amending Act, 1903 (1 of 1903).

⁶20. If any such ⁷* officer, or his surety, shall be committed to custody by the Collector ⁸* * * he shall ⁹* * * be at liberty, whilst in confinement, to sue the Collector by whom he may have been confined, should he deem the demand upon him unjust.

21, 22. [*Appointment of Vakils to defend certain suits; days to be set aside by certain Courts for trial of suits respecting rent or revenue.*—Rep. by the Repealing Act, 1874 (XVI of 1874).

¹See foot-note 8 on page 83, *ante*.

²The words "money or," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

³The words "balance or," were repealed, *ibid*.

⁴The words "or in either of the cities of Patna, Dacca, or Murshidabad," which were repealed by the Repealing Act, 1876 (XII of 1876), are omitted.

⁵The words "that no part, or a portion only, of the sum demanded was due from him, or" which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

⁶Sec. 20, so far as it relates to the recovery of money belonging to the Government, was repealed by the Public Demands Recovery Act, 1880 (Ben. Act VII of 1880).

⁷The word "Native" was omitted by para. 3 and the Sixth Sch. of the Adaptation of Laws Order, 1950.

⁸The words and figure "and shall not obtain his release in the mode specified in section 19," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

⁹The word "nevertheless," was repealed, *ibid*.

Officers or
their sure-
ties may
sue
Collector
whilst in
confine-
ment.

Bengal Regulation V of 1799

(The Bengal Wills and Intestacy Regulation, 1799.)

SHORT TITLE GIVEN	Act V of 1897.
AMENDED	Ben. Reg. V of 1827. Act IV of 1914. Act XL of 1858. Act XXI of 1870. Act XVI of 1874. Act XII of 1891. Act I of 1903.
REPEALED IN PART	
ADAPTED	(a) The Government of India (Adaptation of Indian Laws) Order, 1937. (b) The Adaptation of Laws Order, 1950.

(3rd May, 1799.)

A Regulation to limit the interference of the Zila ² * *
Courts of Diwani Adalat in the execution of wills and
administration to the estates of persons dying intestate.*

1. Doubts having been entertained to what extent, and Preamble.
in what manner, the Judges of the Zila ³* * * Courts of
the Diwani Adalat in the Provinces of Bengal, (Bihar, Orissa
and Benares,) are authorised to interfere in cases wherein the
inhabitants of the above Provinces may have left wills at their
decease, and appointed executors to carry the same into effect
or may have died intestate leaving an estate real or personal ;
with a view to remove all doubts on the authority of the
Zila ³* * * Courts in such cases, and to apply thereto, as
far as possible, the principle ⁴* * * * * that in suits
regarding succession and inheritance the Muhamadan laws with
respect to Muhammadans, and the Hindu laws with regard to
Hindus, be the general rules for the guidance of the Judges,
the Vice-President in Council has passed the following
Regulation, to be considered in force from the period of its
promulgation, in the above Provinces, respectively.

¹SHORT TITLE.—This short title was given by the Amending Act, 1897 (V of 1897).

LOCAL EXTENT.—This Regulation was passed for the whole of the former Province of Bengal—see sec. 1.

It has been declared by the Laws Local Extent Act, 1874 (XV of 1874), sec. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), sec. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

²The words "and City," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

³The words "and City" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

⁴The words and figures "prescribed in section 15 of Regulation 4, 1793, viz.," were repealed, *ibid*.

(Secs. 2—4.)

Estates of
Hindus,
Muhamma-
dans and
others,
not being
disqualified
landhol-
ders,
leaving
wills.

12. In all cases of a Hindu¹, Mussulman or other person² subject to the jurisdiction of the Zila³ * * Courts, having at his death left a will and appointed an executor or executors to carry the same into effect, and in which the heir to the deceased may not be a disqualified landholder subject to the superintendence of the Courts of Wards⁴ * * * the executors so appointed are to take charge of the estate of the deceased, and proceed in the execution of their trust according to the will of the deceased and the laws and usages of the country, without any application to the Judge of the *Diwani Adalat* or any other officer of Government for his sanction; and the Courts of Justice are prohibited to interfere in such cases, except on a regular complaint against the executors for a breach of trust or otherwise, when they are to take cognizance of such complaint in common with all others of a civil nature⁵ * * *.

Estates of
persons
dying
intestate.

13. In case of a Hindu, Mussalman or other person subject to the jurisdiction of the Zila³ * * Courts dying intestate, but leaving a son or other heir, who, by the laws of the country, may be entitled to succeed to the whole estate of the deceased, such heir, if of age and competent to take the possession and management of the estate, or, if under age or incompetent and not under the superintendence of the Court of Wards, his guardian or nearest of kin who, by special appointment or by the law and usage of the country, may be authorized to act for him, is not required to apply to the Courts of Justice for permission to take possession of the estate of the deceased as far as the same can be done without violence; and the Courts of Justice are restricted from interference in such cases, except a regular complaint be preferred⁶ * * *.

If there be
more heirs
than one
to estate
of intes-
tate.

4. If there be more heirs than one to the estate of a person dying intestate, and they can agree amongst themselves in the appointment of a common manager, they are at liberty to take possession, and the Courts of Justice are restricted from interference, without a regular complaint, as in the case of a single heir;

¹So much of secs. 2 and 3 as restricts the interference of the Civil Courts in cases of inheritance by minors was repealed by Act XL of 1858 (Minors).

²Section 2 has been repealed (so far as relates to the executors of persons who are not Muhammadanas, but are subject to the jurisdiction of a District Court in West Bengal) by the Hindu Wills Act, 1870 (XXI of 1870), sec. 4.

³The words "or City," which were repealed by the Repealing Act 1874 (XVI of 1874), are omitted.

⁴The words and figures "under Regulation 10, 1799, or any other Regulation relative to the jurisdiction of the Court of Wards," which were repealed partly by the Repealing Act, 1874 (XVI of 1874), and partly by the Amending Act, 1903 (1 of 1903), are omitted.

⁵The rest of sec. 2, which was repealed by the Repealing Act, 1874 (XVI of 1874), is omitted.

⁶The words "when they are to proceed thereupon according to the general Regulations," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

of 1793.]

(Secs. 5, 6.)

but if the right of succession to the estate be disputed between several claimants, one or more of whom may have taken possession, the Judge, on a regular suit being preferred by the party out of possession, shall take good and sufficient security from the party or parties in possession for his or their compliance with the judgment that may be passed in the suit ; or, in default of such security being given within a reasonable period, may give possession, until the suit may be determined, to the other claimant or claimants who may be able to give such security, declaring at the same time that such possession is not in any degree to affect the right of property at issue between the parties ; but to be considered merely as an administration to the estate for the benefit of the heirs who may on investigation be found entitled to succeed thereto.

¹5. In the event of none of the claimants to the estate of a person dying intestate being able to give the security required by the preceding section, and in all cases wherein there may be no person authorized and willing to take charge of the landed estate of a person deceased, the Judge within whose jurisdiction such estate may be situated (or in which the deceased may have resided, or the principal part of the estate may lie, in the event of its being situated within two or more jurisdictions) is authorized to appoint an administrator for the due care and management of such estate, until, in the former case, the suit depending between the several claimants shall have been determined, or in the latter case until the legal heir to the estate, or other person entitled to receive charge thereof as executor, administrator or otherwise, shall attend and claim the same ; when, if the Judge be satisfied that the claim is well founded, or if the same be established after any inquiry that may appear necessary, the administrator appointed by the Court shall deliver over the estate to him with a full and just account of all receipts and disbursements during the period of his administration.

In what cases Judge may appoint administrator for care and management of estate of intestate.

¹6. In all instances of an administrator being appointed under this Regulation, he is, previous to entering upon the execution of his office, to give good security for the faithful discharge of his trust in a sum proportionate to the extent thereof ; and the Judge appointing him is authorized to fix for him (subject to the approbation of the Court of *Sadar Diwani Adalat*, to whom a report is to be made in such instances) an adequate personal allowance to be paid out of the proceeds of the estate, and to be a percentage thereupon, after deducting the expenses of management.

Security to be taken from, and allowances paid to, administrators.

¹Secs. 5 and 6 have been modified by the Bengal Attached Estates Management Regulation, 1827 (V of 1827).

[Ben. Reg. V of 1799.]

(Secs. 7, 8.)

Procedure
in cases of
persons
dying
intestate,
leaving
personal
property
to which
there is
no claim-
ant.

7. The Judges of the Zila ¹* * Courts, on receiving information that any person within their respective jurisdictions has died intestate, leaving personal property, and that there is no claimant to such property, are to adopt such measures as may be necessary for the temporary care of the property, and to issue an advertisement in the current languages of the country, requiring the heir of the deceased, or any person entitled to receive charge of his effects, to attend for this purpose.

Such advertisement to be published on the spot where the property was found, at the *Diwani Adalat cutcherry* of the ¹* * ; and, if ascertainable, at the dwelling-place of the deceased ²* * ; after which, should any person attend and satisfy the Judge of his title to the property, or to receive charge thereof as executor, administrator or otherwise, the same is to be delivered up to him, on repayment of any necessary expense incurred in the care of it.

Should no claim be preferred within the twelve months next ensuing, an inventory of the property and report of the circumstances of the case is to be transmitted to the ³[Board of Revenue, or, in Assam, to the State Government, for its] orders.

Saving of
jurisdiction
of
Court of
Wards.

8. Nothing in this Regulation is to be understood to limit or alter the jurisdiction of the Court of Wards in the appointment of managers or guardians for ⁴* * disqualified landholders, ⁴* * or in any case wherein a special power may be vested in the Court of Wards ⁴* *

¹The words "or City," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

²The words "or, if the deceased were a European, in the *Calcutta Gazette*," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

³The words "Board of Revenue, or, in Assam, to the Provincial Government for its" were substituted for the words "Governor General in Council for his" by the Decentralization Act, 1914 (IV of 1914), and the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

⁴The word "the," the words and figures "described in Regulation 10, 1793," and the words "by the above or any other Regulation" respectively, which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

Bengal Regulation VIII of 1800

(The Bengal Revenue-free Lands Regulation, 1800.)¹

SHORT TITLE GIVEN	...	Act I of 1903.
REPEALED IN PART	...	Act XVI of 1874. Ben. Act VII of 1876. Act XII of 1891.
ADAPTED	...	(a) The Government of India (Adaptation of Indian Laws) Order, 1937. (b) The Adaptation of Laws Order, 1950.

(3rd July, 1800.)

*A Regulation for * registers of estates paying revenue, and lands held exempt from the payment of revenue.*

I to 18. [Formation of pargana registers; divisions in same; period for preparing same; forms of register; materials for preparing same; repeal of certain enactments; explanation of the term "estate"; insertion in registers of alterations in annual revenue; copies of registers to be sent to Board of Revenue; new forms of registers; establishment.]—Rep. by the Land Registration Act, 1876 (Ben. Act VII of 1876).

19. By section 26, Regulation XIX, 1793³, section 21, Regulation XXXVII, 1793⁴, [and the corresponding sections in Regulation XLI⁵ and XLII⁵, 1795,] all lands held exempt from the payment of revenue, which the holders may have omitted to register by the time prescribed in the publication therein referred to, are become subject to the payment of revenue, unless sufficient cause be shown, to the satisfaction of the [Central Government], for their not having been registered within the limited period.

Extension of period for registration of revenue-free grants, and assessment thereafter of all unregistered lands.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Regulation has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), sec. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), sec. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

²The words "preparing a general pargana register of lands, and for certain alterations in the prescribed," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

* 1793.

³The Bengal Revenue-free Lands (Non-Badshahi Grants) Regulation, 1793.

⁴The Bengal Revenue-free Lands (Badshahi Grants) Regulation, 1793.

⁵Bengal Regulations XLI and XLII of 1795 were repealed by the North-Western Provinces Land-revenue Act, 1873 (XIX of 1873).

⁶These words were substituted for the words "Governor General in Council" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

[*Ben. Reg. VII of 1800.*]

(Secs. 20—22.)

It appearing, however, that the publications directed in section 25, Regulation XIX, 1793¹, section 20, Regulation XXXVII, 1793², [and the corresponding sections in Regulation XLI, and XLII, 1795,] have not in every instance been made as therein directed (namely, the publication respecting lands held under *badshahi* grants in the principal *cutcherry* of the holders of such grants; and respecting other exempted lands in the principal *cutcherry* of every proprietor and farmer of land paying revenue to Government and of every ⁴* Collector in lands held *khas* by Government; or when the estate, farm or *khas* land may consist of two or more whole *parganas*, or portions of *parganas*, in the principal *cutcherry* of each *pargana* or portion of a *pargana* comprised in such estate, farm or *khas* land), the Collectors are hereby further directed, immediately on the receipt of this Regulation, to ascertain whether the publications above specified have been duly made as prescribed throughout their respective Collectorships; and, if not, they are to cause the same to be made without delay, in the manner prescribed, as well as in their own *cutcheries*, and in the *cutcheries* of the *Diwani* Courts situated within their respective *zilas*; allowing the further period of one year from the date of such publications for the registry of the lands therein specified.

After the expiration of such period any unregistered land found to be held exempt from the payment of revenue is to be assessed, under the provisions contained in the above Regulations, whenever the same may be discovered.

and the Collectors are to enter lands so assessed (together with all other *lakhiraj* lands which may be brought upon the public assessment) in their succeeding ³* register of estates paying revenue, as well as in their register of intermediate mutations.

20 to 22. [Notice of establishment of new villages and by persons succeeding to landed property; *Kanungos'* records to be delivered to Collector.]—Rep. by the Land Registration Act, 1876 (*Ben. Act VII of 1876.*)

¹The Bengal Revenue-free lands (Non-Badshahi Grants) Regulation, 1793.

²See foot-note 4 on page 89 ante.

³See foot-note 5 on page 89 ante.

⁴The word "Native" was omitted by para. 3 and the Sixth Sch. of the Adaptation of Laws Order, 1950.

⁵The word "quinquennial," which was repealed by the Repealing Act, 1874 (XVI of 1874), is omitted.

Bengal Regulation X of 1800

(The Bengal Inheritance Regulation, 1800.)¹

SHORT TITLE GIVEN

... Act V of 1897.

(11th December, 1800.)

A Regulation for preventing the division of landed estates in the Jungle Mahals of the Zila of Midnapore and other Districts.

1. By Regulation XI, 1793¹, the estates of proprietors of land dying intestate are declared liable to be divided among the heirs of the deceased agreeably to the Hindu or Muhammadan laws.

Preamble.

A custom, however, having been found to prevail in the jungle *mahals* of Midnapore and other districts, by which the succession to landed estates invariably devolves to a single heir without the division of the property, and this custom having been long established, and being founded in certain circumstances of local convenience which still exist, the Governor-General in Council has enacted the following rules to be in force in the Provinces of Bengal, (Bihar and Orissa) from the date of its promulgation.

2. Regulation XI, 1793², shall not be considered to supersede or affect any established usage which may have obtained in the jungle *mahals* of Midnapore and other districts, by which the succession to landed estates, the proprietor of which may die intestate has hitherto been considered to devolve to a single heir, to the exclusion of the other heirs of the deceased.

Regulation XI, 1793, not to operate in jungle mahals of Midnapore and other districts.

In the *mahals* in question the local custom of the country shall be continued in full force as heretofore, and the Courts of Justice be guided by it in the decision of all claims which may come before them to the inheritance of landed property situated in those *mahals*.

¹SHORT TITLE.—This short title was given by the Amending Act, 1897 (V of 1897).

LOCAL EXTENT.—This Regulation was passed for the whole of the former Province of Bengal (see sec. 1), and was extended to the *Parganas* of Pataspur and Bograi in the district of Midnapore in West Bengal by the Cuttack Land-revenue Regulation, 1805 (XII of 1805), sec. 36.

²The Bengal Inheritance Regulation, 1793.

Bengal Regulation I of 1801.

(The Bengal Land-revenue Assessment Regulation 1809.)¹

SHORT TITLE GIVEN	...	Act I of 1803.
		Ben. Regn. XIX of 1814.
		Ben. Regn. XI of 1822.
		Act XVI of 1874.
REPEALED IN PART	...	Act XII of 1876.
		Act XII of 1891.
		Act I of 1903.
		(a) The Government of India
		(Adaptation of Indian Laws)
		Order, 1937.
ADAPTED	...	(b) The Adaptation of Laws
		Order, 1950.

(15th January 1801.)

A Regulation^{2} * * * to explain and amend the rules
* * * for the division of joint estates, and allotment of
the fixed assessment thereupon^{2*} * * **

1, 2. [Local extent; attachment of estate or farm for arrears of revenue.]—Rep. by the Repealing Act, 1874 (XVI of 1874).

3. [Immediate sale of attached estates, on proprietors refusing to furnish accounts.]—Rep. by the Bengal Government Indemnity Regulation, 1822 (XI of 1822).

4. [Distress and sale of personal property in certain cases.]—Rep. by the Repealing Act, 1874 (XVI of 1874).

5. to 7. [Sale of estates in one or more lots.]—Rep. by the Bengal Government Indemnity Regulation, 1822 (XI of 1822).

Section 10.
Regulation
1, 1793, to
be
observed
in all
cases of
public sale
and
private
transfer or
division.

8. Section 10, Regulation 1, 1793³, prescribes the general rule and principle for the allotment of the fixed assessment upon all divisions of estates, whether publicly sold or transferred by the private act of the proprietors, namely, that the assessment upon the portion of the estate to be separated shall bear the same proportion to its actual produce as the fixed assessment upon the whole estate may bear to its actual produce.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

²LOCAL EXTENT.—This Regulation has been declared, by the Local Extent Act, 1874 (XV of 1874), sec. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

The Regulation has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), sec. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

³Words and figures in the title, which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

⁴The Bengal Permanent Settlement Regulation, 1793.

of 1801.]

(Sec. 8.)

This rule is to be strictly observed in all cases, whether of public sale or private transfer, or of division between sharers, heirs or joint proprietors of whatever description;

and it is hereby explained that by the term "actual produce" is to be understood the neat annual rent, or other neat produce receivable by the proprietor, after deducting from the gross rent, or other gross produce, the actual expense of collection and other usual charges of management, inclusive of *pulbandi* or the expense of embankments, and similar incidental expenses, where such may be paid by the proprietor from his gross receipts; but exclusive of his *malikanā* or proprietary income, and all other personal appropriations of the gross produce of his estate, as such can have no claim to consideration in determining the neat produce for an equal division of landed property, or for the allotment of the public assessment thereto in conformity to the prescribed rule.

"Actual produce" defined.

But the above Regulation further provides that the produce to which the general rule of proportion is to be applied shall be ascertained in the mode that is or may be prescribed by the ¹[Central Government] ²* * *

It is hereby enacted that whenever the Collector or other public officer, to whom the allotment of the assessment upon the portion of an estate may be committed, shall have reason to suspect the accuracy of the village-accounts produced by a *patwari*, ³* * *

Procedure of officer charged with allotment of assessment of portion of estate, should he doubt accuracy of *patwari* accounts, or they be not forthcoming.

or if such accounts shall be found to have been fabricated or altered, or not to be the true accounts, ⁴* * *;

or if in any case the true village-accounts of the lands, rents, receipts and disbursements may not be forthcoming, but the Collector or other officer, under the powers vested in him ⁵* * * shall have obtained satisfactory accounts for the three past years of the lands and rents of the entire *zamindari*, *taluk* or other estate with a specification of the *mahal* or *mahals* proposed to be separately assessed,

¹These words were substituted for the words "Governor General in Council" by paragraph 4(I) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²The words and figures "and the *patwari* accounts furnished in pursuance of clause Fourth of section 62, Regulation 8, 1793, for the allotment of the public revenue agreeably to the principles laid down in Regulation 1, 1793, having in many instances proved fallacious or unsatisfactory, and in some instances not being procurable by the officers of Government," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

³The words and figures "in pursuance of clause Fourth of section 62, Regulation 8, 1793, or of any other Regulation," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

⁴The words, "under the process prescribed in clause Eighth of the above section and Regulation," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

⁵The words and figures "by clause First of section 29, Regulation 7, 1799, or any other Regulation," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

(Secs. 9, 10.)

he shall adjust the assessment upon such *mahal* or *mahals*, under the general rule of proportion, according to the average neat produce (as above explained) ascertainable from the general accounts of the estate so obtained, without further regard to the village-accounts than may appear to him proper, with a view to compare and check the other accounts :

Provided, however, that in all cases the Collector or other officer shall adopt every authorized measure to obtain the most accurate accounts procurable, and shall fully satisfy himself that the accounts from which he may compute the neat produce of an estate to be divided and distinctly assessed are sufficiently accurate to prevent any risk of loss to Government from the proposed allotment of the assessment ; without evidence of which no distinct assessment is to be proposed by any Collector or approved by the the Board of Revenue :

Collectors
not to fix
assessment
on portion
of estate,
without
Board's
sanction.

Provided further that nothing in this Regulation shall be understood to authorize the Collectors to fix the amount of the assessment to be allotted upon the portion of an estate, whether publicly or privately disposed of, without the sanction of the Board of Revenue ¹* * *

²* * *

9. [Statement of land for sale to be submitted without delay.]—Rep. by the Repealing Act, 1874 (XVI of 1874).

Collectors
authorized
to cause
attendance
of land-
holder or
other
inhabitant.

10. All purchasers of lands at the public sales are required to attend the Collector of the district wherein the lands may be situated, either in person or by their representatives duly authorized, and to execute the usual *kabuliyat* and *kistbandi* for the public revenue assessed upon the lands purchased by them.

In cases of doubt as to the real purchase ³* * * the Collector is authorized to cause the personal attendance of the alleged purchaser at his *cutcherry* if resident within his jurisdiction ; or, if the purchaser be resident in any other *zila*, the Collector of such *zila* is authorized and required to cause the attendance of the purchaser at his *cutcherry* on the application of the Collector in whose district the lands may lie.

¹The words and figures "or to alter the provisions made for the correction of error or collusion in such allotments, by section 25, Regulation 25, 1793, in cases of private divisions of estates, and by clause Second of section 29, Regulation 7, 1793, in cases of public sales," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

²The rest of sec. 8, which was repealed by the Amending Act, 1903 (I of 1903), is omitted.

³The words and figures "or of suspicion that the purchase has been made in opposition to the rules contained in clauses Third and Fourth of section 29, Regulation 7, 1793," which were repealed by the Repealing Act, 1877 (XVI of 1874), are omitted.

The Bengal Land-revenue Assessment Regulation, 1801. 95
of 1801-1

(Secs. 11—13.)

and to make any examination or inquiry, that may be desired by the latter Collector or by the Board of Revenue, to whom a full report is to be made in such cases *

It is further hereby declared that the Collectors are generally empowered to cause the personal attendance of any landholder or other inhabitant within their respective jurisdictions, when the attendance of such person may be indispensably necessary for the purpose of any authorized public inquiry, or to enable them to perform any part of their public duty, under the Regulations or instructions of the Board of Revenue.

But no Collector shall cause the personal attendance of any landholder or other person who may appoint an agent duly authorized, to attend for him if the attendance of the agent so appointed shall be sufficient for the purpose required.

Not to enforce personal attendance of principal if that of agent will suffice.

Any infringement of this rule will subject the Collectors to a prosecution for damages in the Civil Courts ;

and, whenever they may have occasion to exercise the power now declared to be vested in them, they are to issue regular summonses, under their official seals and signatures, specifying the name, designation and residence of the party summoned, and the purpose or purposes for which his attendance is required.

Effect of infringement of rule. Summons to persons whose attendance is required.

11. [*Sale of shares in an undivided estate.*—Rep. by the Bengal Government Indemnity Regulation, 1822(XI of 1822).

12, 13. [*Division of joint estates, and allotment of the assessment.*—Rep. by Ben. Reg. XIX of 1814.

14. * * * *

The rules regarding separable *taluks* contained in Regulation VIII, 1793⁵, were never meant to be applied to any new *taluks* constituted since the period of the decennial settlement.

By section 9, Regulation I, 1793⁶, the *zamindars* and all other proprietors of land have been declared at liberty to transfer, by sale, gift or otherwise their proprietary rights in

Rules regarding separable *taluks* not applicable to *taluk* constituted since decennial settlement.

¹The words and figures "for the orders of the Governor General in Council, as directed in clause Fourth of section 29, Regulation 7, 1799," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

²The word "Native" was omitted by para. 3 and the Sixth Sch. of the Adaptation of Laws Order, 1950.

³The words "Governor General in Council or," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

⁴Portion of sec. 14 which was repealed by the Amending Act, 1891 (XII of 1891), is omitted.

⁵The Bengal Decennial Settlement Regulation, 1793.

⁶The Bengal Permanent Settlement Regulation, 1793.

(Sec. 15.)

the whole or any portion of their respective estates : but by section 10 of the same Regulation it is required that all such transfers be notified to the Collector of the *zila*; that the fixed *jama* assessed upon the whole estate may be apportioned on the several shares in the manner therein prescribed; that the names of the proprietors of each share and the *jama* assessed thereon may be entered upon the public registers and that separate engagements for the payment of the *jama* assessed upon each share may be executed by the proprietors, who are thenceforward to be considered separate proprietors of distinct estates; but until such notification and separation shall have been made the whole of the estate is declared responsible to Government for the discharge of the fixed *jama* assessed upon it, in the same manner as if no transfer had taken place.

Transfer of proprietary right in portions of estates in certain cases declared invalid, as far as respects rights of Government.

If, therefore, any *zamindar* shall have disposed of his proprietary rights in any portion of his *zamindari* subsequently to the promulgation of the Regulation above mentioned, whether under the denomination of an independent *taluk* or otherwise, and the *talukdar* or other person to whom the portion of an estate may have been so transferred shall have omitted to obtain a separate allotment of the public assessment thereon in the mode prescribed by the regulations, such transfer, as far as respects the rights of Government, must be considered altogether invalid;

and if the land so privately transferred, but not separately assessed, should have been since, or shall be hereafter, included in any public sale for arrears of revenue, the illicit and imperfect private transfer must be deemed to have been altogether done away.

In such cases the lands transferred, until publicly registered and separately assessed, form part of an undivided estate; and as such are liable to be sold for any arrear of revenue which may be due from any part of the estate :

Section not to apply to dependent tenures.

Provided, however, that nothing in this section be considered applicable to dependent *taluks*, or other tenures dependent on the estate to which they are attached, and from which, by their title deeds or otherwise, they are not entitled to be separated as a distinct estate.* * *

15. [Applicability of certain rules to Benares.]—Rep. by the Repealing Act, 1874 (XVI of 1874).

*The words and figures "This declaration is also repeated in section 28, Regulation 25, 1793, which contains the specific rules established by Government for the division of estates paying revenue, and the allotment of the *jama* upon the several portions thereof," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

The words and figures "section 6, Regulation 4, 1793, authorizes and confirms such tenures, subject to the restrictions contained in sections 2 and 5 of that Regulation with the explanation of the latter in section 7. Regulation 4, 1794, and clause Fifth of section 28, Regulation 7, 1793," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

Bengal Regulation XII of 1805

(The Cuttack Land-revenue Regulation 1805.)

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Bengal Regulation XII of 1805

(The Cuttack Land-revenue Regulation, 1805.)¹

SHORT TITLE GIVEN	...	Act I of 1903.
AMENDED	...	Ben. Regn. XIV of 1825.
REPEALED IN PART	...	<div> Act X of 1840. Act X of 1859. Act XVI of 1864. Act XVI of 1874. Act XII of 1891. Act XI of 1893. </div>
REPEALED IN PART AND AMENDED.	...	Act I of 1903.
ADAPTED	...	<div> (a) The Government of India (Adaptation of Indian Laws) Order, 1937. (b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948. (c) The Adaptation of Laws Order, 1950. </div>

(5th September 1805.)

A Regulation for the settlement and collection of the public revenue in [the Zila of Cuttack, including] the parganas of Pataspur, [Kamardachor] and Bhograi, at present included in the zila of Midnapore.

Preamble.

1. Whereas it is necessary that fixed rules should be established for the settlement and collection of the public revenue in the zila of Cuttack :²

* * * * *

And whereas it has been judged to be advisable to extend the Regulations in force for the settlement and collections of the public revenue in the Province of Bengal, with certain modifications and exceptions, to the zila of Cuttack :³

The following rules have been enacted, and are to be in force from the period of the promulgation of this Regulation.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903).

LOCAL EXTENT.—This Regulation extends to the parganas of Pataspur and Bhograi (see the title), which now form part of the district of Midnapore in West Bengal.

²This includes the parganas of Pataspur and Bhograi (see the title to this Regulation), which now form part of the district of Midnapore.

³Portion of section 1, which was repealed by the Amending Act 1903, is omitted.

(Secs. 2—18.)

2 to 11. [Confirmation, with modifications, of Proclamation as to settlement of land-revenue in the Moghalbandi territory of the zila of Cuttack; registration of landed property.]—Rep. by the Amending Act, 1903 (1 of 1903).

12 to 16. [Extension of the Stamp Regulation to Cuttack; coinage in which settlement is to be made and revenue paid; bonds dischargeable in sicca rupees; engagements for coins other than siccas or gold mohurs not to be enforced.]—Rep. by the Repealing Act, 1874 (XVI of 1874).

Modifica-
tion of
Regula-
tion XIX,
1793.

17. The following rules, containing modifications of the provisions contained in Regulation XIX, 1793,¹ respecting lands exempt from the payment of revenue under grants not being badshahi or royal, shall be in force in the zila of Cuttack.²

Validity of
grants of
alienated
lands made
before
14th
October,
1791.

18. First.—All grants for holding land exempt from the payment of revenue, made previously to the 14th day of October, 1791, corresponding with the 30th Assin, 1198, ³[West Bengal] era ; [the 3rd Kartik, 1199, Fasli ;] the 30th Assin, 1199, Wilayati ; [the 3rd Kartik, 1848, Sambat ; and the 15th Safr 1207, Hijri,] by whatever authority, and whether by a writing, or without a writing, shall be deemed valid, provided that the grantee actually and *bona fide* obtained possession of the land so granted, and held it exempt from the payment of revenue, previously to the date abovementioned, and that the land shall have been subsequently rendered subject to the payment of revenue by the officers or the orders of the Government.

If it shall be proved to the satisfaction of the Court that the grantee did not obtain possession of the land so granted, or did not hold it exempt from the payment of revenue previously to the date above specified, or that he did obtain possession of it prior to that date but that it has been since subjected to the payment of revenue by the officers or the orders of Government, the grant shall not be deemed valid.

Validity of
grants
made after
14th
October,
1791, and
confirmed
or ad-
mitted
before 14th
October,
1803.

Second.—All grants for holding land exempt from the payment of revenue, which may have been made subsequently to the 14th day of October, 1791, and prior to the 14th day of October, 1803, by whatever authority, and which may have been confirmed or expressly admitted antecedently to the 14th day of October, 1803, by the authority of the existing Government, shall be deemed valid, provided the grantee actually and

¹The Bengal Revenue-free Lands (non-Badshahi Grants) Regulation, 1793.

²This includes the *parganas* of Potaspur and Bhogral (see the title to this Regulation) which now form part of the district of Midnapore.

³Substituted for the word "Bengal" by para. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

of 1805.]

(Sec. 18.)

bona fide obtain possession of the land so granted, and held the same exempt from the payment of revenue, previously to the 14th day of October, 1803, and the land shall not have been afterwards rendered subject to the payment of revenue by the officers or the orders of the late Government.

If it shall be proved, to the satisfaction of the Court, that the grantee did not obtain possession of the land so granted, or did not hold it exempt from the payment of revenue, previously to the 14th day of October, 1803, or that he did obtain possession of it prior to that date, but that it has been since subjected to the payment of revenue by the officers or the orders of the late Government, the grant shall not be deemed valid.

Third.—In the event of a claim being preferred by any person to hold land exempt from the payment of revenue, under a grant made previously to the 14th day of October, 1791, or under a grant made subsequent to that date, but prior to the 14th day of October, 1803, and confirmed or admitted by the authority of the existing Government, and of its being proved to the satisfaction of the Court in which the suit may be instituted in the first instance, or to which it may be appealed, that the grantee held the land exempt from the payment of revenue previously to the date specified, but that it was afterwards subjected to the payment of revenue by an officer of Government, and the Court shall entertain doubts as to the competency of such officer, under the powers vested in him, to subject the land to the payment of revenue, the Court shall suspend its judgment, and report the circumstances to the ¹[State Government,] to whom a power is reserved of determining whether such officer was or was not competent to subject the land to the payment of revenue; and upon receiving the determination of the ¹[State Government,] the Court is to decide accordingly.

Reference
of doubtful
claims to
State
Govern-
ment.

In like manner the ¹[State Government] reserves to ²[itself] the power of determining, in cases of doubt, whether any officer of the *Raja* of Birar who may have made, confirmed or admitted grants of land exempt from the payment of revenue in the name or on the part of the *Raja* was competent to exercise such authority.

The Courts of Judicature shall accordingly suspend their judgment in cases of the above nature, and report the circumstances for the decision of the ¹[State Government].

¹The words "Provincial Government" were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937 and the word "State" was subsequently substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

²The word "himself" in the original text, is to be read as if the word "itself" were substituted therefor—see the Amending Act, 1903 (1 of 1903).

[Ben. Reg. XII.]

(Sec. 18.)

Rules
respecting
grants for
life only.

Fourth.—But no part of the three preceding clauses shall be constructed to empower the Courts to adjudge any person, not being the original grantee, entitled to hold land now paying revenue to Government, exempt from the payment of revenue, under any grant made previously to the 14th day of October, 1803, the writing for which may expressly specify it to have been given for the life of the grantee only;

or supposing no such specification to have been made in writing, or the writing not to be forthcoming, or no writing to have been executed, where the grant, from the nature and denomination of it, shall be proved to be a life-tenure only, according to the ancient usage of the country.

Heirs of
present
possessors.

Fifth.—Nor to entitle the heirs of any person now holding land exempt from the payment of public revenue, under whatever grant, to succeed to and hold such land exempt from the payment of revenue upon the demise of the present possessor, where the writing for such grant may expressly specify it to have been given for the life of the grantee only; or supposing no such specification to have been made in the writing, or the writing not to be forthcoming, or no writing to have been executed, where, from the nature and denomination of the grant, it shall be proved to be a life-tenure only, according to the ancient usages of the country.

Nor to entitle the heirs to any such person to hold the lands exempt from the payment of revenue after his demise, supposing the writing for the grant not to specify whether it was to be considered hereditary or otherwise, unless it shall be proved, to the satisfaction of the Court, that the grant, from the nature and denomination of it, is hereditary, according to the ancient usages of the country.

But upon the demise of the present possessor of any such grant which may be adjudged not hereditary under this clause, if it shall appear that one or more successions, in virtue of whatever right, shall have taken place before the 14th day of October, 1803, the lands shall not be subjected to the payment of revenue under the decree without the sanction of the ¹[State Government] to whom a copy of the proceedings and decree of the Court is to be transmitted, and to whom is reserved a power of declaring the lands subject to the payment of revenue, or not, as may appear to ²[it] proper.

Present
possessors
not to
transfer or
mortgage
grants.

Sixth.—The present possessors of lands held exempt from the payment of revenue, under all life-grants declared by the preceding clause not to be hereditary, are prohibited from selling or otherwise transferring them or mortgaging the revenue of them for a longer period than their own lives; and all such transfers and mortgages are declared illegal and void:

¹See foot-note 1 on page 100, ante.

²The word "him", in the original text, is to be read as if the word "it" was substituted therefor—see the Amending Act, 1905 (1 of 1905).

of 1805

(Secs. 19, 20.)

Seventh.—Provided, however, that nothing herein contained shall authorize the subjecting to the payment of revenue any quantity of land, not exceeding ten *bighas*, held exempt from the payment of revenue under a grant made prior to the 14th day of October, 1803, and *bona fide* appropriated as an endowment for temples or for other religious or charitable purposes.

Exemption of certain grants for religious or charitable purposes.

Moreover, if any land so held and appropriated, exceeding ten *bighas* shall become liable to assessment under the rules contained in this Regulation, and the Judge of the Court before which the suit for the assessment of such land may be depending, or the Collector of the district, if no judicial suit respecting it be depending, shall be of opinion that immediate assessment of such land would be productive of distress, he shall report the same, with the circumstances of the case, for the consideration of the ¹[State Government].

Eighth.—The Courts of Justice shall not take cognizance of any claim to hold exempt from the payment of revenue, under the present Regulation, land which may have been subjected to the payment of revenue for the period of twelve years prior to the 14th day of October, 1803; nor of any claim to hold land exempt from the payment of revenue, which may have been subjected to the payment of revenue for the twelve years preceding the date on which the claim may be instituted, unless the claimant can show good and sufficient cause for not having preferred his claim to a competent jurisdiction within that period.

Courts not to take cognizance of certain claims to hold exempted lands.

19. All grants for holding land exempt from the payment of revenue, which may have been made since the 14th day of October, 1803, corresponding with the 29th Assin, 1210, ²[West Bengal] era; [the 14th Kartik, 1211, Fasli;] the 29th Assin, 1211, Wilayati; [the 14th Kartik, 1860, Sambat; and the 27th Jammadius-Sani, 1218, Hijri,] by any other authority than that of the British Government, and which may not have been confirmed by the ⁴[Central Government] or by an officer empowered to confirm them are declared invalid.

Grants of land exempt from revenue, made since 14th October, 1803, and not confirmed, declared invalid.

20. If doubts shall be entertained by any Court as to the competency of the authority of any officer to confirm any such grant, the Court is to suspend its judgment, and report the circumstances of the case to the ¹[State Government,] to whom a power is reserved of determining finally whether the officer

Procedure in case of doubt of authority of officer confirming grant.

¹See foot-note 1 on page 100, *ante*.

²Substituted for the word "Bengal" by para. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³These words were substituted for the words "Governor General in Council" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1987.

[Ben. Reg. XII.

(Secs. 21—23.)

possessed competent authority to confirm the grant, or otherwise; and the Court, upon receiving the determination of the ¹[State Government,] shall decide accordingly.

Assessing
lands
resumed
under
sections
18 to 20.

21. The following rule shall be in force in the ²[State] of Cuttack for assessing land declared subject to the payment of revenue to Government under the three foregoing sections of this Regulation.

Revenue to
belong to
the Gov-
ernment.

22. *First.*—The revenue assessable on all lands which shall be adjudged or become liable to the payment of revenue, under sections 18, 19 and 20 of the present Regulation, is declared to belong ³[to the Government].

Assessment
regulated
by rules
for settle-
ment of
revenue-
paying
lands.

Second.—The revenue, payable ⁴[to the Government], shall be regulated by the rules prescribed by this Regulation for concluding the settlement of lands paying revenue ⁵[to the Government], and by any subsequent rules which may be prescribed relative to the assessment of lands subject to the payment of revenue ⁶[to the Government].

Procedure
in case
proprietor
refuses to
agree to
assess-
ment.

If the proprietor shall not agree to the assessment so fixed, a report of his objections, and of the circumstances of the case, shall be made by the Collector of the district ⁴[to the Board of Revenue,] who will determine on the amount of the assessment; and, if the proprietor shall refuse to engage for the same, the lands shall be let in farm or held *khas*, under the rules contained in the existing Regulations.

Periods
fixed
for regis-
tering
grants
and pre-
paring
periodical
registers.

23. The period of one year, reckoning from the expiration of the current *Wilayati* year ¹212, ⁵ shall be allowed to the proprietors to register their grants.

On the expiration of that period of time, the Collectors shall prepare the first periodical register of lands held exempt from the payment of revenue; and the second, third, and each successive register, at the expiration of every five years.

¹See foot-note 1 on page 100, *ante*.

²Substituted for the word "Province" by para. 4(1) of the Adaptation of Laws Order, 1950.

³The words "to the Crown" were substituted for the words "to Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937 and the word "Government" was subsequently substituted for the word "Crown" by para. 4(1) of the Adaptation of Laws Order, 1950.

⁴These words were substituted for the words "through the Board of Revenue, for the information of the Governor General in Council" by the Amending Act, 1903 (1 of 1903).

⁵*i.e.*, the 19th September, 1905.

of 1803.]

(Sections 24—26.)

24. All the provisions contained in Regulation XIX, 1793¹, regarding lands exempt from the payment of revenue to Government under grants not being *badshahi* or royal, which are not superseded by the foregoing rules, are hereby declared to be in force in the *zila* of Cuttack.

Regulation XIX, 1793, in force in Cuttack.

25. The following rules containing modifications of the provisions contained in Regulation XXXVII, 1793², respecting lands held exempt from the payment of revenue under *badshahi* or royal, grants, shall be in force in the *zila* of Cuttack; and all the provisions of that Regulation which are not superseded and rendered of no effect by the following rules shall be considered to be in force in the said *zila*.

Also Regulation XXXVII, 1793.

26. First.—The term "*badshahi* grant" shall be construed to extend to all grants made by the supreme power for the time being, and consequently to include grants of the following descriptions:—

"*Badshahi* grant" defined.

First, royal grants properly so called, secondly, grants made by the *Suba* of Orissa; and thirdly, grants made by the *Rajas* of *Birar*.

Second.—*Altamgha*, *jagir*, *aima*, *madadmash* or other *badshahi* grants for holding land exempt from the payment of revenue, made previous to the 14th October, 1803, shall be deemed valid provided the grantee actually and *bonâ fide* obtained possession of the land so granted previous to that date, and the grant shall not have been subsequently resumed by the officers or the orders of Government.

Badshahi grants made before 14th October, 1803, declared valid.

If it shall be proved to the satisfaction of the Court that the grantee did not obtain possession of the land so granted previous to the 14th October, 1803, or that he did obtain possession of it prior to that date, but that it has been since resumed by the officers or the orders of Government, the grant shall not be deemed valid.

Third.—In the event, however, of a claim being perferred by any person to hold land exempt from the payment of revenue under a *badshahi* grant made previous to the 14th October, 1803, and on its being proved to the satisfaction of the Court in which the suit may be instituted in the first instance, or to which it may be appealed, that the grantee held the land exempt from the payment of revenue previous to that date, but that it was subjected

Procedure in case of doubt as to authority of officers resuming grants.

¹So much of sec. 24 as authorizes and requires proprietors and farmers of estates and dependent *taluks* (in cases in which grants for holding land exempt from the payment of revenue have been made subsequent to the 1st December, 1790), "of their own authority to collect the rents of such land and to dispossess the grantees of the proprietary right in the land and to re-annex it to the estate or *taluk* in which it may be situate" has been repealed by the Bengal Rent Act, 1859 (X of 1859), sec. 28.

²The Bengal Revenue-free Lands (Non-Badshahi Grants) Regulation, 1793.

³The Bengal Revenue-free Lands (Badshahi Grants) Regulation, 1793.

[Ben. Reg. XII

(Section 27.)

to the payment of revenue posterior thereto by an officer of Government, and the Court shall entertain doubts as to the competency of such officer under the powers vested in him to resume the grant and subject the lands to the payment of revenue, the Court shall suspend its judgment, and report the circumstances to the ¹[State Government], to whom a power is reserved of determining whether such officer was or was not competent to resume the grant; and, upon receiving the determination of the ¹[State Government] the Court is to act accordingly.

Rules
respecting
grants for
life only.

Fourth.—But no part of the preceding clauses shall be construed to empower the Courts to adjudge any person, not being the original grantee, entitled to hold land paying revenue to Government exempt from the payment of revenue under a *jagir* or other grant made previous to the 14th October, 1803, where the grant may expressly specify it to have been given for the life of the grantee only; or supposing no such specification to have been made in the grant, or the grant not to be forthcoming, where the grant, from the nature and denomination of it, shall be proved to be a life-tenure only, according to the ancient usages of the country.

Fifth.—Nor to entitle the heirs of any person now holding lands exempt from the payment of public revenue, under a *jagir* or other *badshahi* life-grant made previous to the 14th October, 1803, to succeed to and hold such land exempt from the payment of revenue upon the demise of the present possessor, where the grant may expressly specify it to have been given for the life of the grantee only: or supposing no such specification to have been made in the grant, or the grant not to be forthcoming, where, from the nature and denomination of the grant, it shall be proved to be a life-tenure only, according to the ancient usages of the country.

Present
possessors
not to
transfer or
mortgage
grants.

Sixth.—The present possessors of lands now exempt from the payment of revenue, under such *jagir* or other life-grants made, previous to the 14th October, 1803, and declared by the preceding clause not to be hereditary, are prohibited from selling or otherwise transferring them, or mortgaging the revenue of the lands for a longer period than their own lives; and all such transfers and mortgages which have been or may be made are declared illegal and void.

Grants
made
since 14th
October,
1803, and
not con-
firmed,
declared
invalid.

27. All *badshahi* grants for holding land exempt from the payment of revenue, which may have been made since the 14th October, 1803, by any other authority than that of the British Government, and which may not have been confirmed by Government, or by an officer empowered to confirm them, are declared invalid.

¹See foot-note 1 on page 100 *ante*.

of 1805.]

(Sections 28—30.)

28. If doubts shall be entertained by any Court as to the competency of the authority of any officer to confirm any such grant, the Court is to suspend its judgment, and report the circumstances of the case to the ¹[State Government,] to whom a power is reserved of determining finally whether the officer possessed competent authority to confirm the grant or otherwise ; and the Court, upon receiving the determination of the ¹[State Government,] shall decide accordingly.

Procedure in case of doubt of authority of officer confirming grant.

29. The period of one year, reckoning from the expiration of the *Wilayati* year 1212,² shall be allowed to the proprietors to register their grants. On the expiration of that period of time the Collectors shall prepare the first periodical register of lands held exempt from the payment of revenue under *badshahi* tenures ; and the second, third and each successive register at the expiration of every five years.

Periods fixed for registering grants and preparing periodical registers.

30. ³* . * * *

In cases in which persons may have obtained pensions from the Government of Birar, under grants made previous to the 14th day of October, 1803, such pensions shall be continued to the present incumbents, and will either descend to their heirs and successors, or will revert ⁴[to the Government] on the decease of the present incumbents, as shall appear to the ¹[State Government,] on a consideration of the tenor of the grant and all the circumstances of the case, to be proper ⁵* *

Pensions.

Provided⁶* * * that in cases in which persons shall have been in the actual receipt of pensions during a period of three or more years antecedent to the 14th day of October, 1803, under whatever authority, such pensions shall be continued to the present incumbents during their respective lives, but shall revert ⁴[to the Government] on the decease of the present incumbents, unless any particular reasons, shall appear to the

¹See foot-note 1 on page 100 *ante*.

²*i.e.*, the 13th September, 1805.

³Portion of sec. 30 which was repealed by the Amending Act, 1891 (XII of 1891), is omitted.

⁴The words "to the Crown" were substituted for the words "to Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937 and the word "Government" was subsequently substituted for the word "Crown" by para. 4(I) of the Adaptation of Laws Order, 1950.

⁵The words and figures "under section 4, Regulation 24, 1793," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

⁶The word "likewise," which was repealed by the Amending Act, 1891 (XII of 1891), is omitted.

[Ben. Reg. XII]

(Sections 31—35.)

¹[State] Government to exist for continuing the said pensions to their heirs and successors :

Provided also that nothing herein contained shall be construed to authorize the resumption of the established donation for the support of the temple of *Jagannath*, the charitable donation to the officers of certain Hindu temples, called *Anuchatri*, and the allowance granted for the support of the Hindu temple at Cuttack, called *Sitaram Thakur Bari*.

Collections
of *sair*,
etc.,
abolished.

31. The settlement of the land-revenue of the *zila* of Cuttack having been ordered to be made with the exclusion of all *sair*-duties, all duties of that description are hereby abolished in the said *zila* ; with the exception of the tax on the sale and consumption of spirituous liquors and intoxicating drugs * * * * *

32. [*Extension of Reg. 36 of 1793 to Cuttack.*—*Rep. by Act XVI of 1864.*

Sanads
granted to
certain
zamindars
confirmed.

33. The Commissioners having granted *sanads* to certain *zamindars*, entitling them to hold their estates at a fixed *jama* in perpetuity, those *sanads* are hereby confirmed. The following is a list of the names of the *zamindars* to whom this provision is to be considered applicable :—

Zamindar of Kila Darpan.

Ditto of ditto Sukinda.

Ditto of ditto Madhupur.

Also *sanad*
granted to
Fateh
Muham-
mad,
jagirdar of
Malud.

34. The Commissioners having likewise granted a *sanad* to Fateh Muhammad, *jagirdar* of *Malud*, entitling him and his heirs for ever, in consideration of certain services performed towards the British Government, to hold his lands exempt from assessment, such *sanad* is hereby confirmed.

Also
settlement
concluded
with
certain
hill and
jungle
zamindars.

35. *First.*—The late Board of Commissioners having concluded a settlement of the land-revenue with certain *zamindars*, whose estates are situated chiefly in the hills and jungles,² for the payment of a fixed annual quitrent in perpetuity, those engagements are hereby confirmed ; and no alteration shall, at any time, be made in the amount of the revenue payable under the engagements in question.³ [to the Government].

¹Substituted, for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

²The words "and the duties levied from pilgrims at *Jagannath*" are omitted, as having been repealed by Act X of 1840. The rest of the section was repealed by the Amending Act, 1903 (1 of 1903), and is also omitted.

³The words "to the Crown" were substituted for the words "to Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937 and the word "Government" was subsequently substituted for the word "Crown" by para. 4(1) of the Adaptation of Laws Order, 1950.

[of 1805.

(Sections 36, 37.)

Second.—The following is a list of the *mahals* to which the provision in the preceding clause is applicable :—

Kila Aull, ¹	Kila Hamishpore, ⁸
Ditto Kujan;	Ditto Marichpur,
Ditto Putra, ³	Ditto Visunpur.

Third.—The *zamindaris* of Korda⁴ and Kanka⁵ being *mahals* of the description of those specified in the preceding clause, a settlement shall be concluded, as soon as circumstances may admit, for the revenue of those *mahals* on the principle on which a settlement has been concluded with the *zamindars* of the *mahals* specified in the preceding clause.

Like settlement to be concluded with *zamindars* of khurda and Kanaka.

36. All Regulations relating directly or indirectly to the settlement and collection of the public revenue, or to the conduct of the officers employed in the performance of that duty * * * in the ⁷[State] of ⁸[West Bengal], which are not superseded by the foregoing rules, are hereby extended to, and declared to be in force in, the *zila* of Cuttack :

Regulations regarding settlement or collection of revenue, etc., in West Bengal extended to Cuttack.

Provided, however, that nothing herein contained shall be construed to authorize the division of the lands comprised in any estates in the *zila* of Cuttack, in which the succession to the entire estate devolves according to established usage to a single heir : in cases of this nature the Courts of Justice are to be guided by the provisions contained in Regulation X, 1880 :⁹

Exceptions.

¹⁰ *

*

*

*

37. [Similar exceptions applicable to the territory of Mayurbhanj.]—*Rep. by the Tributary Mahals of Orissa Act, 1893 (XI of 1893).*

¹Query Ali.
⁵Query Kanaka.

²Query Patiya.

³Query Harispur.

⁴Query Khurda.

⁶The words "whether European or Native" were omitted by para. 3 and the Sixth Sch. of the Adaptation of Laws Order, 1950.

⁷Substituted, *ibid*, for "Province".

⁸Substituted for the word "Bengal" by para. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

⁹The Bengal Inheritance Regulation, 1800.

¹⁰Portion repealed by the Tributary Mahals of Orissa Act, 1893 (XI of 1893), is omitted.

Bengal Regulation XIII of 1805

(The Cuttack Police Regulation, 1805.)¹

SHORT TITLE GIVEN	...	Act I of 1903.
		Act XVI of 1874.
REPEALED IN PART	...	Act XII of 1876.
		Act XI of 1893.
REPEALED IN PART AND AMENDED		Act I of 1903.
		(a) The Government of India (Adaptation of Indian Laws) Order, 1937.
ADAPTED	...	(b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.
		(c) The Adaptation of Law Order, 1950.

(5th September 1805.)

A Regulation for the maintenance of the peace and for the support and administration of the Police in the zila of Cuttack, * * *

Preamble.

1. Whereas it is essential to the security of the persons and property of the inhabitants of the districts and lands included in the Province of Cuttack and its dependencies that a regular and efficient system of police should be maintained in the said Province :

* * * * *

the following rules have been enacted, to be immediately in force in [the Province of Cuttack including] the *parganas* of Patáspur, [Kamárdáchor] and Bhograi.

Zila of Cuttack.

2. [The districts and lands comprised in the Province of Cuttack, with the exception of the *parganas* of Patáspur, Kamárdáchor and Bhográi, shall be⁴ * * * denominated the zila of Cuttack.]

Certain *parganas* included in zila of Midnapore, but subject to Regulations enacted for Cuttack.

3. The abovementioned *parganas* of Pataspur, (Kamárdáchor) and Bhográi, shall be included, as at present, in the zila of Midnapore; subject however, to all the laws, and Regulations which have been or may be enacted for the internal government of the zila of Cuttack;

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Regulation extends to the *parganas* of Pataspur and Bhograi [see secs. 1, 3, 4(I), 13] which now form part of the district of Midnapore.

²The words and figure "and for amending certain provisions contained in Regulation IV, 1804," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

³Portion of sec. 1 which was repealed by the Amending Act, 1903 (I of 1903), is omitted.

⁴The words and figure "formed into one zila, instead of two zilas, as prescribed in Regulation IV, 1804, and shall be," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

(Section 4.)

Provided, nevertheless, that it shall at any time be lawful for ¹[the State Government,] by notification in the ²[Official Gazette,] to make any alteration with respect to the boundaries of the said zila[s] of Midnapore [and Cuuttack] which may appear to be expedient.

Rules for
appointment of
darogas.

4. First.—The following rules shall be observed in the appointment of darogas for the maintenance of the police [in the zila of Cuttack, and] in the abovementioned Parganas of Patáspur, [Kamardachor] and Bhograí :

Certain
zamindars
to continue
to act as
police
officers
in their
respective
estates.

Second.—In cases in which the zamindars, talukdars and other landholders have not been formally divested of the charge of the police within the limits of their respective estates, for misconduct or any other reason, either by the late Marátha Government or by the Board of Commissioners for the settlement of the affairs of Cuttack, such zimndars, talukdars and other landholders shall continue, under the responsibility stated in section 6, Regulation IV, 1804,³ in charge of the police, according to established usage, within their respective estates ; that is the principal zamindars, talukdars and other landholders, being proprietors of large estates, shall be constituted darogas of police within the limits of their respective possessions ; and the inferior zamindars, talukdars and other landholders, being proprietors of petty estates, shall be considered to be subordinate officers of police, subject to the abovementioned responsibility, under the immediate authority of darogas, who shall be selected and appointed for the maintenance of the police in estates or mahals of the latter description.

Third.—[In what cases khandails to be nominated to the charge under control of darogas.]—Rep. by the Amending Act, 1903 (1 of 1903).

Salaries of
darogas.

Fourth.—The darogas who may be appointed under ⁴[clause] second⁵* * of this section shall receive such salaries as the ⁶[State] Government may think proper to fix for their support, on a consideration of the labour and responsibility of the offices held by them.

¹The words "the Governor General in Council, by an Order in Council," in the original text, are to be read as-if the words "the Local Government, by notification in the *Calcutta Gazette*," were substituted therefor—see the Amending Act, 1903 (1 of 1903). The words "Provincial Government" were then substituted for the words "Local Government" by paragraph 4(I) of the Government of India (Adaptation of Indian Laws) Order, 1937 and the word "State" was substituted for the word "Provincial" by para. 4(I) of the Adaptation of Laws Order, 1950.

²The words "*Official Gazette*" were substituted for the words "*Calcutta Gazette*" by paragraph 4(I) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³Ben. Reg. IV of 1804 was repealed by the Repealing Act, 1868 (VIII of 1868); but this reference was saved by section 1 of that Act.

⁴This word was substituted for the word "clauses" by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

⁵The words "and third," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

⁶Substituted for the word "Provincial" by para. 4(I) of the Adaptation of Laws Order, 1950.

of 1805.]

(Sections 5—13.)

5. to 7. [*Lands assigned by the late Government for the maintenance of the sardars and other paiks to be continued to them; Register of the sardar and other paiks; Darogas to fix limits of local authority of the Khandāits, etc.*].—Rep. by the Amending Act, 1903 (1 of 1903).

8. Nothing contained in this Regulation shall be construed to exempt the zamindars, talukdars, farmers and other holders of land, although they be not formally constituted officers of police, from the duty of affording every assistance in the prevention of breaches of the peace and in the apprehension of public offenders, who are immediately to be delivered into the custody of the nearest officers of police.

Zamindars, etc., not exempted from affording assistance to prevent breaches of peace, etc.

9. Any zamindar, talukdar or holder of land exempt from revenue who may be suspected of conniving at any robbery or other public offence will be liable to be prosecuted before the Criminal Courts of the country, and punished on conviction under the general laws and Regulations of the country.

Liability of zamindars, etc., suspected of conniving at robbery, etc.

10. 11. [*Register of lands assigned for sadar and other paiks; above rules not applicable to dushāds or village-watchmen, entertained by landholders.*].—Rep. by the Amending Act, 1903 (1 of 1903).

12. [*Authority of Board of Commissioners in Cuttack discontinued.*].—Rep. by the Repealing Act, 1874 (XVI of 1874).

13. All laws and Regulation for the maintenance of the police, and for the administration of justice in criminal cases, in the ¹[State] of ²[West Bengal], which have been or shall be enacted, and which shall not be inconsistent with or repugnant to the provisions contained in this Regulation, ³* * * shall have full force and effect (in the zila Cuttack and) in the parganas of Pataspur, (Kamardachor) and Bhograi included in the zila of Midnapore.

Extension of Regulations for police and administration of criminal justice to Cuttack.

* * * * *

¹Substituted for the word "Province" by para. 4(I) of the Adaptation of Laws Order, 1950.

²Substituted for the word "Bengal" by para. 5(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³The words and figures "and likewise such of the rules contained in Regulation 4, 1804, as are not either specifically or virtually rescinded by the present Regulation," which were repealed by the Repealing Act, 1876 (XII of 1876), are omitted.

⁴The proviso to sec. 13, which was repealed by the Tributary Mahals of Orissa Act, 1895 (XI of 1895), is omitted.

Bengal Regulation XI of 1806

(The Bengal Troops Transport and Travellers' Assistance Regulation, 1806.)¹

SUPPLEMENTED	...	Ben. Regn. VI of 1825.
SHORT TITLE GIVEN	...	Act V of 1897. Ben. Regn. II of 1811. Ben. Regn. III of 1820.
REPEALED IN PART	...	Act XVI of 1874. Act XII of 1876. Act XII of 1891.
REPEALED IN PART AND AMENDED		Act V of 1897. (a) The Government of India (Adaptation of Indian Laws) Order, 1937. (b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948. (c) The Adaptation of Laws Order, 1950.
ADAPTED	...	

(3rd July 1806.)

A Regulation for facilitating the progress of detachments of troops through the Company's territories; for affording any requisite assistance to persons travelling through those territories * * *

Preamble.

1. Whereas it is expedient to enact into a Regulation, for general information and observance, the rules which have been established by Government at different times (with such amendments as have been deemed necessary) for facilitating the progress of military detachments through the Company's Provinces, for ascertaining and defraying any necessary expense incurred for that purpose, and for providing compensation when any material damage may be sustained in the cultivation of the country from the march or encampment of troops ;

¹SHORT TITLE.—This short title was given by the Amending Act, 1897 (V of 1897).

LOCAL EXTENT.—This Regulation was passed for the whole of the former Province of Bengal—see the concluding clause of sec. 1.

It has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), sec. 6 to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), sec. 3, to be in force in the following Scheduled Districts, namely:—

West Jalpaiguri and the Western Duars, in the Jalpaiguri district.
The Western Hills and the Terai, in the Darjeeling district.

REPEAL AS TO Coolies.—Such part of this Regulation as authorizes the Collectors and their native officers, or the Magistrates and their police-officers, to give their official aid in procuring coolies for the purpose of facilitating the march of troops or the progress of Civil and Military officers or other individuals travelling through the country, either on the public service or on their private affairs, was repealed by Ben. Reg. III of 1820.

²Portions of the title, which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

(Sections 2, 3.)

and whereas it has also been judged proper to empower the local officers of police to afford such reasonable assistance as may be required by travellers ¹* * * proceeding through their respective jurisdictions in procuring the means of prosecuting their journeys ;

the following rules have been enacted, to be in force throughout the whole of the Provinces subject to the immediate government of the Presidency of Fort William (according as such rules may be applicable to the said Provinces respectively) from the date of their promulgation.

2. Whenever a detachment of troops, or a single corps shall be ordered to proceed, by land or by water, through any part of the Company's territories, the commanding officer of such detachment or corps is required to give the earliest practicable notice to the Collectors of the revenue of the *zilas* through which the troops are to pass, of the probable time of their arrival within such districts respectively; together with information of the probable period of their arrival at the particular places where supplies may be required, and a specification of the supplies which will be wanted.

The commanding officer will likewise notify to the Collectors the probable period of the arrival of the troops at the rivers or *nalas* intersecting their march, where boats or temporary bridges may be necessary for crossing the troops and the baggage attached to them.

3. First.—On receiving the notification mentioned in the foregoing section the Collector shall immediately issue the necessary orders to the landholders, farmers, *tahsildars* or other persons in charge of the lands through which the troops are to pass, for providing the supplies required, and for making any requisite preparations of boats or temporary bridges, or otherwise for enabling the troops to cross such rivers or *nalas* as may intersect their march, without any impediment or delay.

The Collector shall at the same time depute a creditable⁴* officer to accompany the troops through his jurisdiction for the purpose of aiding in procuring the necessary supplies and of facilitating the march of the troops.

¹The words "(whether European or Native)" were omitted by para. 3 and the Sixth Schedule of the Adaptation of Laws Order, 1950.

²Portions of section 1 which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

³The words "The Commanding Officer will at the same time communicate to the Magistrates of the *zilas* through which the troops are to pass the probable time of the arrival of the troops within their respective jurisdictions," which were repealed by the Amending Act, 1897 (V of 1897), are omitted.

⁴The word "Native" was omitted by para. 3 and the Sixth Schedule of the Adaptation of Laws Order, 1950.

Notice to be given to Collectors and Magistrates, by officers commanding detachments.

Procedure of Collector on notice.

of 1806.]

(Section 4.)

It shall also be the duty of such ¹* officer to provide the troops with whatever bearers, coolies, ² boatmen, carts and bullocks may be indispensably necessary to enable the troops to prosecute their route.

Should he experience any difficulty in the performance of this duty, he is at liberty to apply for assistance to the nearest police-officer, who is directed to afford his aid in providing the number of persons, and of carts and bullocks required.

Police to assist on providing bearers, boatmen, carts and bullocks.

Second.—The supplies furnished under the foregoing clause (including earthen pots, firewood and every article of supply) shall be paid for by the persons receiving the same at the current *bazar* prices of the place at which they may be provided ;

Rates for supplies furnished to troops.

and all officers commanding detachments of troops or single corps marching through any part of the Company's territories are enjoined to make immediate inquiry into any complaints which may be preferred to them by the persons furnishing such supplies or in their behalf against any person or persons under their command, and to afford such redress to the complainants as the nature of the case may appear to require.

Commanding officers to inquire into, and redress, complaints against persons under their command.

4. *First.*—Whenever a detachment of troops or single corps shall be provided with boats, temporary bridges or other accommodations by any landholder, farmer, *tahsildar* or other person, conformably to the orders of the Collector of the *zila*, for the purpose of crossing the troops and their baggage over rivers or *naḥas*, the commanding officer of such detachment or corps will grant a certificate to the person furnishing the same specifying the number of boats and persons employed, the burthen of each boat, and how long employed on the public service.

Certificate to be granted by commanding officer when troops are provided with boats, etc.

In instances in which temporary bridges may be constructed for the above purpose the certificate to be granted by the commanding officer is to specify generally the dimensions of the bridges and the materials of which they may be composed.

Second.—The certificate mentioned in the foregoing clause shall be immediately transmitted to the Collector of the *zila* by the person receiving it, accompanied by a detailed account of the expense incurred for the purposes therein specified.

Certificate to be sent to Collector with account.

¹The word "Native" was omitted by para. 3 and the Sixth Schedule of the Adaptation of Laws Order, 1950.

²This Regulation has been repealed as to coolies—see foot-note 1 on page 115, *ante*.

(Section 5.)

Account to be sent by Collector to commanding officer. Endorsement by commanding officer.

Account and vouchers to be sent by Collector with his report to Central Government.

Collector may pay charge if reasonable.

Procedure for landholders, etc., sustaining injury from march or encampment. Certificate by commanding officer.

Certificate with statement of claim to be presented to Collector within ten days.

The Collector shall without delay communicate the particulars of the account to the officer commanding the detachment or corps on whose account the expense may have been incurred, who shall certify generally thereon whether the services charged for in it were performed, or shall state such exceptions as he may have to offer to any of the charges.

Third.—When the account above-mentioned shall be returned to the Collector he shall certify whether the sums and rates charged in it are in his opinion reasonable and conformable to the usual rates of labour and hire in the *zila* ; and shall transmit the account, with the vouchers and certificates relating to it, with any requisite observations thereupon, through the prescribed channel, to the ¹[Central Government]

After the account shall have undergone the examination and report prescribed for all military contingent charges, the ¹[Central Government] will pass such final order as may appear proper.

In the meantime the Collector is empowered in such cases to pay the amount of the charge, or such proportion of it as he may consider reasonable, to the landholder, farmer or other person entitled thereto ; inserting the amount so disbursed by him at the foot of his treasury-account, in explanation of his treasury balance, in the mode prescribed for similar cases.

5. First.—Whenever a proprietor, farmer, tenant or manager of land through which any detachment or corps of the Company's troops may march, or on which they may be encamped, shall consider himself entitled to compensation for any injury sustained from the march or encampment of the troops, he shall immediately furnish the commanding officer of such troops with as accurate a statement as can be prepared of the nature and extent of the injury sustained ; when the commanding officer is required to certify generally thereon whether or not the damage represented to have been sustained has been actually committed, together with his opinion respecting the justice and extent of the claim.

Second.—If the proprietor, farmer, tenant or manager, after receiving such certificate, shall consider himself entitled to compensation, he will be at liberty to present the statement of his claim, with the commanding officer's certificate thereon, to the Collector of the *zila* (either in person or by his *vakil*) within ten days from the date of the certificate ; but no claim of this description shall be received by the Collector after the expiration of that period, unless the person preferring it shall assign good and satisfactory reason for the delay.

¹These words were substituted for the words "Local Government" by para. 3 and Schedule XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1806.]

(Sections 6, 7.)

The Collector, on receiving a statement of damage and the commanding officer's certificate thereon within the prescribed period, or afterwards if sufficient reason be assigned for the delay, shall forthwith adopt such measures as may appear requisite to ascertain whether or not the claim be will founded ; and shall report his proceedings to the Board of Revenue, accompanied by his opinion on the merits of the claim, for the consideration and order of ¹[the Central Government].

It is however, declared that no claim will be received unless accompanied by the prescribed certificate of the commanding officer of the troops by whom the damage may be stated to have been committed ; excepting in instances in which the claimant can show good and sufficient cause for not having obtained such certificate.

In such cases, if the Collector shall be satisfied with the cause assigned by the claimant for not having obtained the prescribed certificate, he shall transmit the petition and statement of the claimant to the officer commanding the troops by whom the damage may be stated to have been committed, and shall wait his reply thereto previously to determining whether or not the claim be entitled to investigation.

6. Immediately on receiving the notification mentioned in section 2, the Magistrates shall transmit orders to the several police-darogas or other local officers of the police through whose jurisdiction the troops are to pass to afford every assistance in their power to facilitate the march of the troops through their respective jurisdictions; and to co-operate as far as necessary, with the person deputed on the part of the Collector in procuring the requisite supplies, as well as in adjusting any disputes which may arise respecting the prices of the articles furnished, and in preventing any alarm to the inhabitants of the country.

Procedure by Magistrates on receiving notice mentioned in section

7. Officers commanding detachments of troops or single corps on their march through any part of the Company's territories are already required, by the general orders issued under date the 1st of February, 1788, to report to the Commander-in-Chief in what manner the troops have been supplied in passing through the districts lying in their route.

Report to Commander-in-Chief by officers commanding troops on march.

In like manner, the Collectors are directed to report to the Board of Revenue, ²* * *, any complaints which may be made to them of the misbehaviour of the troops, when such complaints shall appear to be well founded and of sufficient importance to require communication to ¹[the Central Government].

¹These words were substituted for the word "Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²The words "and the Magistrates to report to the Nizam-at Adalat, for the information of the Governor General in Council," which were repealed by the Amending Act, 1897 (V of 1897), are omitted.

(Section 8.)

Police empowered, in cases of necessity, to assist travellers in prosecuting their route.

8. Whenever any military officer, not commanding nor proceeding with a corps or detachment of troops, or any other person ¹* * not restricted by Government from passing through the country, may be proceeding within any part of the Company's ²[States], either on the public service or on his private affairs, and shall be in need of assistance during his route to enable him to prosecute his journey, he shall be at liberty to apply to the nearest local officer of police to aid him in providing any requisite bearers, *coolies*,³ boatmen, carts or bullocks, or any necessary supplies of provisions or other articles.

Assistance how afforded.

On receiving an application of the above nature the police-officer to whom it may be made shall furnish the aid required, or cause it to be furnished by the proper person or persons: provided that a sufficient number of persons who have been accustomed to act as bearers, *coolies*³ or boatmen, or the requisite number of carts and bullocks, not exclusively appropriated to the purposes of agriculture and occasionally let for hire, can be procured within his jurisdiction.

Persons and carts and bullocks not to be employed in furnishing assistance.

But all police-officers are strictly forbidden, under pain of dismissal from office ⁴* * *, on applications of the above nature, to compel any persons not accustomed to act as bearers, *coolies*³ or boatmen, to serve, on such occasions, or to furnish a traveller, or cause him to be furnished, with bullocks or carts kept for private use and not for hire, or exclusively appropriated to the purposes of agriculture.

Person employed to be at liberty to return from first police-station.

Persons so employed, and the persons in charge of carts and bullocks so provided, shall be at liberty to return from the first police-station in the next *zila* through which the corps or detachment is to march, unless a voluntary engagement to the contrary may be entered into by such persons.

Conditions of assistance to travellers.

The police-officers are further enjoined to be careful that a proper compensation for the bearers, *coolies*,³ boatmen, carts or bullocks employed, and a just price for the provisions or other articles provided, be secured to the persons entitled thereto.

¹The words "(whether European or Native)" were omitted by para. 3 and the Sixth Schedule of the Adaptation of Laws Order, 1950.

²Substituted for the word "Provinces" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

³This Regulation has been repealed as to *coolies*—see foot-note 1 on page 115, *ante*.

⁴The words and figures "under the rules prescribed by Regulation 5, 1804," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

Bengal Regulation V of 1812

(The Bengal Land-revenue Sales Regulation, 1812.)¹

SUPPLEMENTED ...	Ben. Reg. XVIII of 1812.
SHORT TITLE GIVEN	Act I of 1903.
	Ben. Reg. XII of 1824.
	Ben. Reg. VII of 1830.
REPEALED IN PART	Act X of 1859.
	Act XVI of 1874.
	Act XII of 1876.
	Act VIII of 1885.
ADAPTED	(a) The Government of India Adaptation of Indian Laws) Order, 1937.
	(b) The Adaptation of Laws Order, 1950

(1st May 1812.)

A Regulation for amending some of the rules at present in force for the collection of the Land-revenue.

1. [Preamble and local extent.]—*Rep. by the Repealing Act, 1874 (XVI of 1874).*

2. * * * Proprietors of lands are declared competent to grant leases for any period which they may deem most convenient to themselves and tenants and most conducive to the improvement of their estates.

Proprietors competent to grant leases for any term.

3. * * * The proprietors of land shall henceforward be considered competent to grant leases to their dependent *talukdars*, under-farmers and *rai-yats*, and to receive correspondent engagements for the payment of rent from each of those classes, or any other classes of tenants, according to such form as the contracting parties may deem most convenient and most conducive to their respective interests :

Proprietors competent to grant leases and receive engagements in any convenient form.

Provided, however, that nothing herein contained shall be construed to sanction or legalize the imposition of arbitrary or indefinite cesses, whether under the denomination of *abwab*, *mathat* or any other denomination.

Prohibition of arbitrary cesses.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Regulation has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), sec. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

The Regulation has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), sec. 3, to be in force in the following Scheduled Districts, namely:—

West Jalpaiguri in the Jalpaiguri district, the Western Hills, the Tarai and the Dumson subdivision, in the Darjeeling district.

²Repealing clauses in secs. 2 and 3, which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

[Ben. Reg. V

(Sections 4—25.)

All stipulations or reservations of that nature shall be adjudged by the Courts of Judicature to be null and void : but the Courts shall notwithstanding maintain and give effect to the definite clauses of the engagements contracted between the parties, or, in other words, enforce payment of such sums as may have been specifically agreed upon between them.

No
attacher
of
lands
on part of
State
Govern-
ment or
purchaser
at public
sales,
entitled to
annual
existing
leases
within
year.

4. ¹* * * Neither any person deputed to attach lands on the part of ²[the State Government], nor purchasers at the public sales, shall be deemed entitled to annul existing leases within the year in which the attachment or sale may have taken place, on the ground that such leases were evidently collusive, without a decision to that effect in a Court of Judicature. ³* * *

5 to 23. [*Rules as to rates of which purchasers of land may collect during year in which sale took place; rules to apply to sequestrators, etc., holding under authority of Boards of Revenue or Commissioners; modifications of existing rules for recovery of arrears.*—Rep. by the Bengal Rent Act, 1859 (X of 1859).

Sales of
entire
estates
not liable
to be
annulled
on
ground of
some
sharers
not
having
obtained
possession.

24. It is hereby declared that sales made of entire estates for the recovery of arrears of public assessment are not liable to be annulled by the Courts of Judicature on the ground that one or more of the sharers may not have obtained possession of his or their interests in the property.

The consideration of and decision on the expediency of selling the entire estate, or of disposing in the first instance of any particular part of it, is hereby declared to reside in the Board of Revenue ⁴* * * subject to the control exercised by the ²[State Government,] in its executive capacity, in matters connected with the public revenue.

Not on
ground
of
proceeds
having
materially
exceeded
arrears
due.

25. No means existing by which any certain or accurate computation can be formed *à priori* of the real value of any estate, or portion of estate, which may be exposed to sale for the recovery of arrears of public assessment or of the adequacy of the price which may be offered for such estate, or portion

¹Portion of sec 4 which was repealed by the Repealing Act, 1874 (XVI of 1874), is omitted.

²The words "the Provincial Government" were substituted for the word "Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was subsequently substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

³The words and figures "the case to be tried as a summary suit under Regulation VII, 1799," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

⁴The words "and Board of Commissioners, respectively," which were repealed by the Repealing Act, 1876 (XII of 1876), are omitted.

of 1812.]

(Sections 26—28.)

of estate; it is hereby declared that sales made at public auction for that purpose are not liable to be annulled by the Courts of Judicature on the ground that the proceeds of the sales have materially exceeded the amount of the arrears due from the proprietor of the lands ¹[to the Government].

The Board of Revenue ²* * * will be guided in cases of that nature by their own discretion; subject, of course, to any instructions with which they may at any time be furnished by the ³[State Government].

26. Inconvenience to the public and injury to private rights having been experienced in certain cases from disputes subsisting among the proprietors of joint-undivided estates it is hereby enacted that whenever sufficient cause shall be shown by the Revenue Authorities, or by any of the individuals holding an interest in such estates, for the interposition of the Courts of Judicature, it shall be competent to the Zila ⁴* * * Judges to appoint a person, duly qualified and under proper security, to manage the estate; that is, to collect the rents and discharge the public revenue, and provide for the cultivation and future improvement of the estate ⁵* * *

Appointment by Judge of managers of joint-undivided estates.

27. In like manner, should the Authorities aforesaid, or any individual holding an interest in the estate, be at any subsequent time dissatisfied with the conduct of the manager, it shall be competent for them or him to represent the circumstances of the case to the Zila ⁶* * * Judge, and to move the Court for the removal of the said manager ⁷* * *

Court may be moved for removal of managers.

28. [*Penalty and interest on arrears.*—*Rep. in part by Ben. Reg. XII of 1824. Residue rep. by Ben. Reg. VII of 1830.*]

¹The words "to the Crown" were substituted for the words "to Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "Government" was subsequently substituted for the word "Crown" by paragraph 4(I) of the Adaptation of Laws Orders, 1950.

²The words "and Board of Commissioners," which were repealed by the Repealing Act, 1876 (XII of 1876), are omitted.

³The words "Provincial Government" were substituted for the words "Local Government" by paragraph 4(I) of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

⁴The words "and City," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

⁵Portion of sec. 26 which was repealed by the Repealing Act, 1874 (XVI of 1874), is omitted.

⁶The words "or City," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

⁷Words^a repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

Bengal Regulation XI of 1812

(The Bengal Foreign Immigrants Regulation, 1812.)¹

SHORT TITLE GIVEN	Act V of 1897.
REPEALED IN PART	Act XVI of 1874.
AMENDED	Act V of 1897. Act XIII of 1898. Act I of 1903.
ADAPTED	(a) The Government of India (Adaptation of Indian Laws) Order, 1937. (b) The Adaptation of Laws Order, 1950.

(18th July, 1812.)

A Regulation to empower the ²[Central Government] to order the removal of emigrants from foreign countries, and their descendants, from any place in the vicinity of the frontier of the State from which they may have emigrated; and, in certain cases, to place and detain any such persons in safe custody; and likewise to provide for the trial of emigrants and their descendants who may excite disturbances in the countries from which they may have emigrated, and of persons aiding them in the prosecution of such attempts.

Preamble.

1. Whereas considerable bodies of persons, being Natives of Arakan and ordinarily denominated Mughhs, have from time to time emigrated from that country and established themselves in that part of the district of Chittagong which lies contiguous to the Arakan frontier ;

And whereas numbers of those persons, or of their descendants, abusing the protection which had been afforded to them in ³[India], have excited disturbances and even levied war in the country of Arakan against the Government of Ava⁴ of which State Arakan is

¹SHORT TITLE.—This short title was given by the Amending Act, 1897 (V of 1897).

LOCAL EXTENT.—This Regulation was passed for the whole of the former Province of Bengal—see the concluding paragraph of section 1.

It has been declared by the Laws Local Extent Act, 1874 (XV of 1874), section 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), sec. 3, to be in force in the following Scheduled Districts, namely:—

West Jalpaiguri, in the Jalpaiguri district; and the Dumson subdivision, in the Darjeeling district.

²These words were substituted for the words "Local Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

³Substituted for the words "the British territories" by para. 3 and the Sixth Schedule of the Adaptation of Laws Order, 1950.

⁴The Government of Ava has ceased to exist, its territories having been annexed to the British Dominions. The territories are now known as "Upper Burma."

(Section 2.)

now a dependency, and have conducted themselves in a manner manifestly tending to disturb the relations of amity which subsist between ¹[the Government of India] and the Government of Ava² ;

And whereas it is, in consequence, necessary that the ³[Central Government] should possess legal powers to remove the said bodies of emigrants and their descendants from the frontier of the territory of Arakan, or any other bodies of aliens, or their descendants, from the vicinity of the country from which they may have emigrated, and likewise to detain in confinement any of those persons, or any other individuals being Natives of foreign countries, or their descendants, for offences of the above nature actually committed by them in the territories of the State from which they may have emigrated ;

And whereas it is necessary to make provision for the trial of persons committing, or aiding in the commission of, the said offences, the following rules have been passed, to be in force from the period of their promulgation throughout the territories immediately dependent on the Presidency of Fort William.

2. Whenever the ³[Central Government], upon due investigation, shall be satisfied that the emigrants from Arakan, or emigrants from any other State, who may have sought an asylum in ⁴[India], or the descendants of any of the said emigrants, shall have abused the protection afforded to them, by attempts to excite disturbances in the State from which they or their ancestors may have emigrated, it shall be competent to the ³[Central Government] to order the removal of those persons to such other part or parts of the country as may be judged most convenient for their future residence.

In like manner it shall be competent to the ³[Central Government] to order such removal whenever ⁵[it] may have grounds to be satisfied that the residence of any body of aliens, or their descendants, in the vicinity of the frontier of the country from which they or their ancestors may have emigrated, is likely to cause any serious misunderstanding between that State and ¹[the Government of India].

¹Substituted for the words "His Majesty" by para. 3 and the Sixth Schedule of the Adaptation of Laws Order, 1950.

²See foot-note 4 on page 131, *ante*.

³These words were substituted for the words "Local Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴Substituted for the words "the British territories" by para. 3 and the Sixth Schedule of the Adaptation of Laws Order, 1950.

⁵This word was substituted for the word "he" by the Burma Laws Act, 1898 (XIII of 1898), sec. 16.

Power to
order
removal
of
emigrants
to parts of
country
deemed
convenient.

of 1812.]

(Sections 3—5.)

3. Whenever any body of emigrants, or any individuals belonging to such body, shall be ordered to be removed from the part of the country in which they may have been established, they shall be allowed to dispose of any property which they may have acquired in such manner as they may judge proper :

Emigrants allowed to dispose of property.

Provided, however, that if they shall nevertheless retain the right to any real property at the period of their actual removal, it shall be competent to the ¹[Central Government] to order such property to be sold by public auction under the superintendence of the Collector of the district.

In that case the nett proceeds of the sale shall be duly paid to the person or persons to whom the said property belonged.

4. In cases in which the ⁴[Central Government] may, on due inquiry and mature deliberation, be satisfied that either the preservation of the tranquillity of ²[India] or of the dominions of the allies of ³[the Government of India] or the maintenance of the relations of amity subsisting between ³[the Government of India] and other States, requires that any of the leaders or other persons of the above description, who may have committed the offences mentioned in section 2 of this Regulation, should be placed and detained under restraint, it shall be competent to the ¹[Central Government] to order any such persons having committed any of the said offences, but not otherwise, to be apprehended and committed to confinement at such place, and under the custody of such public officer, and detained in confinement for such time, as may be deemed by the ¹[Central Government] necessary for the public good.

Power to order leaders or other emigrants to be apprehended and kept under restraint.

5. *First.*—Any persons of the above description, or their descendants, who, while living under the protection of ²[the Government of India] shall enter the country from which they or their ancestors may have emigrated, or any other foreign country, and shall excite, or attempt to excite, disturbances in the said countries, shall be liable to be brought to trial for that offence ⁴* * * and, if convicted, shall be sentenced to suffer imprisonment for the period of seven years.

Punishment for emigrants or their descendants exciting disturbances in countries from which they emigrated.

¹These words were substituted for the words "Local Government" by para. 3 and Schedule XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²Substituted for the words "the British territories" by para. 3 and the Sixth Schedule of the Adaptation of Laws Order, 1950.

³Substituted for the words "His Majesty" by para. 3 and the Sixth Schedule of the Adaptation of Laws Order, 1950.

⁴The words "before the Court of Circuit," in clauses *First* and *Second* of sec. 5, which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

[Ben. Reg. XI of 1812.]

(Section 5.)

Punish-
ment of
persons
aiding or
assisting
in
attempts
to excite
such
disturb-
ances.

Second.—Any persons ¹* * * who shall furnish emigrants from foreign countries with any assistance, either of men, money or arms, in prosecution of their attempts to excite disturbances in the country from which they may have emigrated, or in any other country, or shall otherwise aid such aliens in the prosecution of their criminal design, shall be liable to be brought to trial for that offence ¹* * * and, if convicted, shall be sentenced to suffer imprisonment for the term of seven years :

Proviso.

Provided, however, that, if the Judge ²* * * by whom the case may be tried shall be of opinion that the punishment established by this and the preceding clause should in any instance be mitigated, he shall submit the proceedings held on the trial ³[to the Central Government, and the Central Government shall pass such orders thereon as it may think fit] :

Provided, moreover, that no sentence or order which may be passed on the trial of any persons under the provisions of the present Regulation shall be competent, or shall be construed, to preclude the ⁴[Central Government] from the exercise of the power vested in the Government by section 4 of ⁵[this Regulation].

¹The words, "whether Native British subjects or aliens," were omitted by para. 3 and the Sixth Schedule of the Adaptation of Laws Order, 1950.

²The words "of Circuit," were repealed, *ibid*.

³The words "to the Local Government, and the Local Government shall pass such orders thereon as it may think fit," were substituted for the words "to the *Nizamat Adalat*, who will recommend to the Governor General in Council such alleviation of the prescribed punishment as they may judge proper" by the Amending Act, 1897 (V of 1897), and the words "Central Government" were subsequently substituted for the words "Local Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴*See* foot-note 1 on page 133, *ante*.

⁵These words were substituted for the words "the said Regulation" by the Amending Act, 1903 (I of 1903).

Bengal Regulation V of 1812

(The Bengal Land-revenue Sales Regulation, 1812.)¹

SUPPLEMENTED ...	Ben. Reg. XVIII of 1812.
SHORT TITLE GIVEN	Act I of 1903.
REPEALED IN PART	<div style="display: flex; align-items: center;"> <div style="font-size: 3em; margin-right: 5px;">{</div> <div> Ben. Reg. XII of 1824. Ben. Reg. VII of 1830. Act X of 1859. Act XVI of 1874. Act XII of 1876. Act VIII of 1885. </div> </div>
ADAPTED ...	<div style="display: flex; align-items: center;"> <div style="font-size: 3em; margin-right: 5px;">{</div> <div> (a) The Government of India Adaptation of Indian Laws) Order, 1937. (b) The Adaptation of Laws Order, 1950 </div> </div>

(1st May 1812.)

A Regulation for amending some of the rules at present in force for the collection of the Land-revenue.

1. [Preamble and local extent.]-*Rep. by the Repealing Act, 1874 (XVI of 1874).*

2. ²* * * Proprietors of lands are declared competent to grant leases for any period which they may deem most convenient to themselves and tenants and most conducive to the improvement of their estates.

Proprietors competent to grant leases for any term.

3. ²* * * The proprietors of land shall henceforward be considered competent to grant leases to their dependent *talukdars*, under-farmers and *rai-yats*, and to receive correspondent engagements for the payment of rent from each of those classes, or any other classes of tenants, according to such form as the contracting parties may deem most convenient and most conducive to their respective interests :

Proprietors competent to grant leases and receive engagements in any convenient form.

Provided, however, that nothing herein contained shall be construed to sanction or legalize the imposition of arbitrary or indefinite cesses, whether under the denomination of *abwab*, *mathat* or any other denomination.

Prohibition of arbitrary cesses.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Regulation has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), sec. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

The Regulation has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), sec. 3, to be in force in the following Scheduled Districts, namely:—

West Jalpaiguri in the Jalpaiguri district, the Western Hills, the Tarai and the Dumson subdivision, in the Darjeeling district.

²Repealing clauses in secs. 2 and 3, which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

[Ben. Reg. V

(Sections 4—25.)

All stipulations or reservations of that nature shall be adjudged by the Courts of Judicature to be null and void : but the Courts shall notwithstanding maintain and give effect to the definite clauses of the engagements contracted between the parties, or, in other words, enforce payment of such sums as may have been specifically agreed upon between them.

No
attacher
of
lands
on part of
State
Govern-
ment or
purchaser
at public
sales,
entitled to
annual
existing
leases
within
year.

4. ¹* * * Neither any person deputed to attach lands on the part of ²[the State Government], nor purchasers at the public sales, shall be deemed entitled to annul existing leases within the year in which the attachment or sale may have taken place, on the ground that such leases were evidently collusive, without a decision to that effect in a Court of Judicature. ³* * *

5 to 23. [*Rules as to rates of which purchasers of land may collect during year in which sale took place; rules to apply to sequestrators, etc., holding under authority of Boards of Revenue or Commissioners; modifications of existing rules for recovery of arrears.*—Rep. by the Bengal Rent Act, 1859 (X of 1859).

Sales of
entire
estates
not liable
to be
annulled
on
ground of
some
sharers
not
having
obtained
possession.

24. It is hereby declared that sales made of entire estates for the recovery of arrears of public assessment are not liable to be annulled by the Courts of Judicature on the ground that one or more of the sharers may not have obtained possession of his or their interests in the property.

The consideration of and decision on the expediency of selling the entire estate, or of disposing in the first instance of any particular part of it, is hereby declared to reside in the Board of Revenue ⁴* * * subject to the control exercised by the ²[State Government,] in its executive capacity, in matters connected with the public revenue.

Not on
ground
of
proceeds
having
materially
exceeded
arrears
due.

25. No means existing by which any certain or accurate computation can be formed *à priori* of the real value of any estate, or portion of estate, which may be exposed to sale for the recovery of arrears of public assessment or of the adequacy of the price which may be offered for such estate, or portion

¹Portion of sec 4 which was repealed by the Repealing Act, 1874 (XVI of 1874), is omitted.

²The words "the Provincial Government" were substituted for the word "Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was subsequently substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

³The words and figures "the case to be tried as a summary suit under Regulation VII, 1799," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

⁴The words "and Board of Commissioners, respectively," which were repealed by the Repealing Act, 1876 (XII of 1876), are omitted.

of 1812.]

(Sections 26—28.)

of estate; it is hereby declared that sales made at public auction for that purpose are not liable to be annulled by the Courts of Judicature on the ground that the proceeds of the sales have materially exceeded the amount of the arrears due from the proprietor of the lands ¹[to the Government].

The Board of Revenue ²* * * will be guided in cases of that nature by their own discretion; subject, of course, to any instructions with which they may at any time be furnished by the ³[State Government].

26. Inconvenience to the public and injury to private rights having been experienced in certain cases from disputes subsisting among the proprietors of joint-undivided estates it is hereby enacted that whenever sufficient cause shall be shown by the Revenue Authorities, or by any of the individuals holding an interest in such estates, for the interposition of the Courts of Judicature, it shall be competent to the Zila ⁴* * * Judges to appoint a person, duly qualified and under proper security, to manage the estate; that is, to collect the rents and discharge the public revenue, and provide for the cultivation and future improvement of the estate ⁵* * *

Appointment by Judges of managers of joint-undivided estates.

27. In like manner, should the Authorities aforesaid, or any individual holding an interest in the estate, be at any subsequent time dissatisfied with the conduct of the manager, it shall be competent for them or him to represent the circumstances of the case to the Zila ⁶* * * Judge, and to move the Court for the removal of the said manager ⁷* * *

Court may be moved for removal of managers.

28. [Penalty and interest on arrears.]—*Rep. in part by Ben. Reg. XII of 1824. Residue rep. by Ben. Reg. VII of 1830.*

¹The words "to the Crown" were substituted for the words "to Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "Government" was subsequently substituted for the word "Crown" by paragraph 4(I) of the Adaptation of Laws Orders, 1950.

²The words "and Board of Commissioners," which were repealed by the Repealing Act, 1876 (XII of 1876), are omitted.

³The words "Provincial Government" were substituted for the words "Local Government" by paragraph 4(I) of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

⁴The words "and City," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

⁵Portion of sec. 26 which was repealed by the Repealing Act, 1874 (XVI of 1874), is omitted.

⁶The words "or City," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

⁷Words repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

Bengal Regulation XI of 1812

(The Bengal Foreign Immigrants Regulation, 1812.)¹

SHORT TITLE GIVEN	Act V of 1897.
REPEALED IN PART	Act XVI of 1874.
AMENDED	Act V of 1897. Act XIII of 1898. Act I of 1903.
ADAPTED	(a) The Government of India (Adaptation of Indian Laws) Order, 1937. (b) The Adaptation of Laws Order, 1950.

(18th July, 1812.)

A Regulation to empower the ²[Central Government] to order the removal of emigrants from foreign countries, and their descendants, from any place in the vicinity of the frontier of the State from which they may have emigrated; and, in certain cases, to place and detain any such persons in safe custody; and likewise to provide for the trial of emigrants and their descendants who may excite disturbances in the countries from which they may have emigrated, and of persons aiding them in the prosecution of such attempts.

Preamble.

1. Whereas considerable bodies of persons, being Natives of Arakan and ordinarily denominated Mughls, have from time to time emigrated from that country and established themselves in that part of the district of Chittagong which lies contiguous to the Arakan frontier ;

And whereas numbers of those persons, or of their descendants, abusing the protection which had been afforded to them in ³[India], have excited disturbances and even levied war in the country of Arakan against the Government of Ava⁴ of which State Arakan is

¹SHORT TITLE.—This short title was given by the Amending Act, 1897 (V of 1897).

LOCAL EXTENT.—This Regulation was passed for the whole of the former Province of Bengal—see the concluding paragraph of section 1.

It has been declared by the Laws Local Extent Act, 1874 (XV of 1874), section 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), sec. 3, to be in force in the following Scheduled Districts, namely:—

West Jalpaiguri, in the Jalpaiguri district; and the Dumson subdivision, in the Darjeeling district.

²These words were substituted for the words "Local Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

³Substituted for the words "the British territories" by para. 3 and the Sixth Schedule of the Adaptation of Laws Order, 1950.

⁴The Government of Ava has ceased to exist, its territories having been annexed to the British Dominions. The territories are now known as "Upper Burma,"

(Section 2.)

now a dependency, and have conducted themselves in a manner manifestly tending to disturb the relations of amity which subsist between ¹[the Government of India] and the Government of Ava² ;

And whereas it is, in consequence, necessary that the ³[Central Government] should possess legal powers to remove the said bodies of emigrants and their descendants from the frontier of the territory of Arakan, or any other bodies of aliens, or their descendants, from the vicinity of the country from which they may have emigrated, and likewise to detain in confinement any of those persons, or any other individuals being Natives of foreign countries, or their descendants, for offences of the above nature actually committed by them in the territories of the State from which they may have emigrated ;

And whereas it is necessary to make provision for the trial of persons committing, or aiding in the commission of, the said offences, the following rules have been passed, to be in force from the period of their promulgation throughout the territories immediately dependent on the Presidency of Fort William.

Power to
order
removal
of
emigrants
to parts of
country
deemed
convenient.

2. Whenever the ³[Central Government], upon due investigation, shall be satisfied that the emigrants from Arakan, or emigrants from any other State, who may have sought an asylum in ⁴[India], or the descendants of any of the said emigrants, shall have abused the protection afforded to them, by attempts to excite disturbances in the State from which they or their ancestors may have emigrated, it shall be competent to the ³[Central Government] to order the removal of those persons to such other part or parts of the country as may be judged most convenient for their future residence.

In like manner it shall be competent to the ³[Central Government] to order such removal whenever ⁵[it] may have grounds to be satisfied that the residence of any body of aliens, or their descendants, in the vicinity of the frontier of the country from which they or their ancestors may have emigrated, is likely to cause any serious misunderstanding between that State and ¹[the Government of India].

¹Substituted for the words "His Majesty" by para. 3 and the Sixth Schedule of the Adaptation of Laws Order, 1950.

²See foot-note 4 on page 131, *ante*.

³These words were substituted for the words "Local Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴Substituted for the words "the British territories" by para. 3 and the Sixth Schedule of the Adaptation of Laws Order, 1950.

⁵This word was substituted for the word "he" by the Burma Laws Act, 1898 (XIII of 1898), sec. 16.

of 1812.]

(Sections 3—5.)

3. Whenever any body of emigrants, or any individuals belonging to such body, shall be ordered to be removed from the part of the country in which they may have been established, they shall be allowed to dispose of any property which they may have acquired in such manner as they may judge proper :

Emigrants allowed to dispose of property.

Provided, however, that if they shall nevertheless retain the right to any real property at the period of their actual removal, it shall be competent to the ¹[Central Government] to order such property to be sold by public auction under the superintendence of the Collector of the district.

In that case the nett proceeds of the sale shall be duly paid to the person or persons to whom the said property belonged.

4. In cases in which the ⁴[Central Government] may, on due inquiry and mature deliberation, be satisfied that either the preservation of the tranquillity of ²[India] or of the dominions of the allies of ³[the Government of India] or the maintenance of the relations of amity subsisting between ³[the Government of India] and other States, requires that any of the leaders or other persons of the above description, who may have committed the offences mentioned in section 2 of this Regulation, should be placed and detained under restraint, it shall be competent to the ¹[Central Government] to order any such persons having committed any of the said offences, but not otherwise, to be apprehended and committed to confinement at such place, and under the custody of such public officer, and detained in confinement for such time, as may be deemed by the ¹[Central Government] necessary for the public good.

Power to order leaders or other emigrants to be apprehended and kept under restraint.

5. *First.*—Any persons of the above description, or their descendants, who, while living under the protection of ²[the Government of India] shall enter the country from which they or their ancestors may have emigrated, or any other foreign country, and shall excite, or attempt to excite, disturbances in the said countries, shall be liable to be brought to trial for that offence ⁴* * * and, if convicted, shall be sentenced to suffer imprisonment for the period of seven years.

Punishment for emigrants or their descendants exciting disturbances in countries from which they emigrated.

¹These words were substituted for the words "Local Government" by para. 3 and Schedule XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²Substituted for the words "the British territories" by para. 3 and the Sixth Schedule of the Adaptation of Laws Order, 1950.

³Substituted for the words "His Majesty" by para. 3 and the Sixth Schedule of the Adaptation of Laws Order, 1950.

⁴The words "before the Court of Circuit," in clauses *First* and *Second* of sec. 5, which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

[Ben. Reg. XI of 1812.]

(Section 5.)

Punish-
ment of
persons
aiding or
assisting
in
attempts
to excite
such
disturb-
ances.

Second.—Any persons ¹* * * who shall furnish emigrants from foreign countries with any assistance, either of men, money or arms, in prosecution of their attempts to excite disturbances in the country from which they may have emigrated, or in any other country, or shall otherwise aid such aliens in the prosecution of their criminal design, shall be liable to be brought to trial for that offence ¹* * * and, if convicted, shall be sentenced to suffer imprisonment for the term of seven years :

Proviso.

Provided, however, that, if the Judge ²* * * by whom the case may be tried shall be of opinion that the punishment established by this and the preceding clause should in any instance be mitigated, he shall submit the proceedings held on the trial ³[to the Central Government, and the Central Government shall pass such orders thereon as it may think fit] :

Provided, moreover, that no sentence or order which may be passed on the trial of any persons under the provisions of the present Regulation shall be competent, or shall be construed, to preclude the ⁴[Central Government] from the exercise of the power vested in the Government by section 4 of ⁵[this Regulation].

¹The words, "whether Native British subjects or aliens," were omitted by para. 3 and the Sixth Schedule of the Adaptation of Laws Order, 1950.

²The words "of Circuit," were repealed, *ibid*.

³The words "to the Local Government, and the Local Government shall pass such orders thereon as it may think fit." were substituted for the words "to the *Nizamat Adalat*, who will recommend to the Governor General in Council such alleviation of the prescribed punishment as they may judge proper" by the Amending Act, 1897 (V of 1897), and the words "Central Government" were subsequently substituted for the words "Local Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴*Sec* foot-note 1 on page 133, *ante*.

⁵These words were substituted for the words "the said Regulation" by the Amending Act, 1903 (I of 1903).

Bengal Regulation XVIII of 1812

(The Bengal Leases and Land-revenue Regulation, 1812.)

SHORT TITLE GIVEN	Act I of 1903.
REPEALED IN PART	{ Act XVI of 1874. Act XII of 1891. Act I of 1903.
REPEALED (LOCALLY IN FORMER PROVINCE OF BENGAL).	Act VIII of 1885.

(19th September, 1812.)

A Regulation for explaining section 2, Regulation V, 1812², [and rescinding sections 3 and 4, Regulation XLIV, 1793, and sections 3 and 4, Regulation L, 1795,]³ and enacting other rules in lieu thereof.

1. Whereas it has been deemed expedient to remove doubts which have arisen on the construction of section 2, Regulation V, 1812, ²[and to rescind sections 3 and 4 of Regulation XLIV, 1793, and sections 3 and 4 of Regulation L, 1795,]³ the following rules have been enacted, to be in force from the promulgation of them in the Provinces of Bengal, [Bihar, Orissa (exclusive of the district of Cuttack)] and the parganas formerly dependent on that district but now annexed to the zila of Midnapore ⁴* *.

Preamble.

2. Doubts having arisen on the construction of section 2, Regulation V, 1812,² it is hereby explained that the true intent of the said section was to declare proprietors of land competent to grant leases for any period, even to perpetuity, and at any rent which they might deem conducive to their interests :

Explanation of section 2, Regulation V, 1812, as to granting leases in perpetuity or otherwise.

Provided, however, that nothing contained in the former or present Regulation shall be construed to empower persons holding a restricted interest in estates, whether for life or for other limited period, or subject to control or restriction in the use or disposal of the property, to grant leases extending beyond the term of their own interest in the property, or exceeding their power or authority over it.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Regulation was passed for the whole of the former Province of Bengal, with certain exceptions (*see* section 1). It has however, been repealed by the Bengal Tenancy Act, 1885 (VIII of 1885) sec. 2(1), in the whole of Bengal except "the town of Calcutta, the Division of Orissa and the Scheduled Districts."

The extension of the repeal to Scheduled Districts depends upon the terms of notifications extending the Act of 1885 to such districts. Under the terms of the notification extending the Act of 1885 to the Jalpaiguri district, the repeal has taken effect in that district.

²The Bengal Land-revenue Sales Regulation, 1812.

³The portions of the title and section 1 which are printed in italics within square brackets are now obsolete. Ben. Regs. XLIV of 1793 and L of 1795 were finally repealed by Act XXIX of 1871.

⁴The words "and Benares," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

[Ben. Reg. XVIII of 1812.]

(Section 3.)

3. *First.*—[*Repeal of ss. 3 and 4 of Regs. XLIV of 1793 and L of 1795.*]—*Rep. by the Repealing Act, 1874 (XVI of 1874).*

Rule for
apportion-
ing assess-
ment on
shares of
estates
when
divided.

Second.—When a division of a joint estate shall be made on the application of the proprietors, or pursuant to the decree of a Court of Justice, the fixed public revenue assessed upon the whole estate shall be apportioned on the several shares agreeably to the principles prescribed in section 10, Regulation I, 1793,¹ * * * without regard to any engagements that may subsist between the proprietors and their dependent *talukdars* (excepting the dependent *talukdars* described in section 7, Regulation XLIV, 1793³), under-farmers or *raiya*ts.

But all leases made in conformity to sections 2 and 3, Regulation V, 1812,⁴ and section 2 of this Regulation shall remain in full force, notwithstanding the division of a joint estate among the sharers, or the sale of the whole or a portion of any estate in satisfaction of a decree of Court, or the devolving of the same by inheritance, or the private transfer thereof by sale, gift or otherwise.

¹The Bengal Permanent Settlement Regulation, 1793.

²The words and figures "and section 7, Regulation XXVII, 1795," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

³Ben. Reg. XLIV of 1793 was repealed by Act XXIX of 1871, but the reference in the text is saved by section 1 of that Act.

⁴The Bengal Land-revenue Sales Regulation, 1812.

Bengal Regulation XXXIX of 1814

(The Bengal Ghatwali Lands Regulation, 1814.)¹

SHORT TITLE GIVEN	...	Act I of 1903.
REPEALED IN PART AND AMENDED		Act I of 1903.
ADAPTED	...	(a) The Government of India (Adaptation of Indian Laws) Order, 1937. (b) The Adaptation of Laws Order, 1950.

(3rd December, 1814.)

A Regulation for the settlement of certain mahals in the district of Birbhum, usually denominated the Ghatwali mahals.

1. Whereas the lands held by the class of persons denominated *ghatwals*, in the district of Birbhum, form a peculiar tenure to which the provisions of the existing Regulations are not expressly applicable ;

And whereas every ground exists to believe that, according to the former usages and constitution of the country, this class of persons are entitled to hold their lands, generation after generation, in perpetuity, subject nevertheless to the payment of a fixed and established rent to the *zamindar* of Birbhum and to the performance of certain duties for the maintenance of the public peace and support of the police ;

And whereas the rents payable by those tenants have been recently adjusted, after a full and minute inquiry made by the proper officers in the Revenue Department ;

And whereas it is essential to give stability to the arrangements now established among the *ghatwals*, the following rules have been adopted, to be in force from the period of their promulgation in the district of Birbhum.

2. A settlement having lately been made on the part of the Government with the *ghatwals* in the district of Birbhum, it is hereby declared that they and their descendants in perpetuity shall be maintained in possession of the lands so long as they shall respectively pay the revenue at present assessed upon them, and that they shall not be liable to any enhancement of rent so long as they shall punctually discharge the same and fulfil the other obligations of their tenure.

Ghatwals in Birbhum, and their descendants in perpetuity to be maintained in possession of lands, and not liable to enhancement of rent.

3. The *ghatwali* lands shall be considered, as at present, to form a part of the *zamindari* of Birbhum ; but the rents of *ghatwals* shall be paid direct to the Assistant Collector stationed at Suri, or to such other public officer as the Board of Revenue

Ghatwali lands to form part of zamindari of Birbhum. Rents how paid.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Regulation was passed only for the district of Birbhum—see the title and secs. 1 and 2.

[Ben. Reg. XXIX of 1814.]

(Sections 4, 5.)

¹ * * * may direct to receive the rents.Amount
payable to
zamindar
of
Birbhum.

4. The difference between the amount of the revenue assessed on the *ghatwals* and the fixed assessment of revenue in this portion of the *zamindari* of Birbhum payable to Government shall be paid to the *zamindar* of Birbhum and his heirs and successors, in perpetuity.

Disposal of
tenure of
ghatwals
failing to
discharge
rents.

5. Should any of the *ghatwals* at any time fail to discharge their stipulated rents, it shall be competent for the ²[State Government];

to cause the *ghatwali* tenure of such defaulter to be sold by public sale in satisfaction of the arrears due from him, in like manner, and under the same rules, as lands held immediately of Government, or to make over the tenure of such defaulter to any person whom the ²[State Government] may approve on the condition of making good the arrear due ; or

to transfer it by grants assessed with the same revenue, or with an increased or reduced assessment, as to the Government may appear meet ; or

to dispose of it in such other form and manner as shall be judged by the ²[State Government] proper.

Should any increase of revenue be obtained from the operation of any arrangements of the nature above described, such increase shall be paid in conformity to the tenor of the preceding article to the *zamindar* of Birbhum, his heirs and successors.

¹The words "with the sanction of the Governor General in Council," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

²The words "Provincial Government" were substituted for the words "Local Government" by paragraph 4(I) of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was subsequently substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

Bengal Regulation V of 1816

(The Bengal Kanungos Regulation, 1816)¹

SHORT TITLE GIVEN	...	Act I of 1903.
EXTENDED BY	...	Ben. Regn. I of 1819.
REPEALED IN PART	...	Act XVI of 1874.
REPEALED IN PART AND AMENDED	...	Act I of 1903.
ADAPTED	...	(a) The Government of India (Adaptation of Indian Laws) Order, 1937. (b) The Adaptation of Laws Order, 1950.

(16th February, 1816.)

A Regulation for establishing the Office of Kánungo in the district of Cuttack, the pargana of Pataspur, and the several parganas dependent on it.

1. Whereas the establishment of the office of kánungo in the district of Cuttack, the pargana of Pataspur and its dependencies² may be expected to be of great public benefit in removing the obstacles which have hitherto impeded the revision of the settlement of the district and parganas abovementioned,³ and in otherwise facilitating the collection of the public revenue and the administration of justice ; the following rules have been enacted² * *

Preamble.

2. One or two persons shall be appointed to fill the office of kánungo in every pargana of the district of Cuttack, in the pargana of Pataspur, and in the several parganas dependent on it,² unless the small extent of a pargana shall render it advisable to place more than one pargana under the same kánungo.

Appointment of kánungos.

3. [Nomination and removal].—Omitted by Schedule XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

4. The office of kánungo is declared not to be hereditary ; but, in all parganas in which persons may be found who formerly discharged the duties of kánungo, the officers to be appointed under this Regulation shall, as far as practicable, be selected from them ; and in supplying future vacancies the Collectors⁴ [or other persons responsible for making the appointments] shall make it a rule, in all practicable cases, to

Office of kánungo not hereditary.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Regulation was extended generally to the former Province of Bengal by the Bengal Kánungos and Patwáris Regulation, 1819 (I of 1819), sec. 4(I).

²The words printed in italics are obsolete, this Regulation having been extended to the whole of the former Province of Bengal by the Bengal Kánungos and Patwáris Regulation, 1819 (I of 1819), sec 4(I).

³The commencement clause, which was repealed by the Repealing Act, 1874 (XVI of 1874), is omitted.

⁴These words were inserted by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Sections 5—7.)

select from the families of the *kánungos* such persons as from character, education and acquirements shall be best qualified to perform the duty.

Salaries of
kánungos.

5. The *kánungos* appointed under this Regulation shall receive such salaries as the ¹[State Government] may think proper to fix for their support.

The salaries so granted shall be considered to preclude all claims to further pecuniary allowances, under the denomination of *nánkár*, or any other denomination.

Revenue of
lands held
by
kánungos
liable to
resump-
tion.

It is also hereby declared that the revenue of all lands, the grant of which may be found to have been obtained by any person in virtue of his discharging the duties of *kánungos*, will be liable to resumption ²[by the Government]; and that this rule shall be considered applicable both to the persons who may be appointed to the office of *kánungo* under the present Regulation, and to those who may not be employed in the public service.

Nothing, however, contained in this provision shall be construed to preclude the ¹[State Government] from continuing to either of those classes of persons the whole or a part of the lands held by them respectively free of assessment, in those cases in which the circumstances of the parties may appear to require that indulgence.

Exception.

6. The above rule is not to preclude claims to rent-free lands, or pensions held by the *kánungos* under grants made to the individuals for reasons unconnected with the office of *kánungo*.

Duties of
kánungos.

7. The *kánungos* are to execute the duties herein specified—

First.—To keep a counterpart *jama-wásil-báki*, or account of the collections made by the *tahsildars* or by *sazawáls* from lands held *khás* or under attachment.

Second.—To keep an account of all lands held under rent-free tenures, whether the grants be hereditary or otherwise, and to report to the Collector all escheats of such lands to ³[the Government].

Third.—To keep a list of the *patwáris* in each village, and a register of *pattas* granted by the landholders to their under-tenants.

¹The words "Provincial Government" were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was subsequently substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.

²The words "by the Crown" were substituted for the words "by Government" by para. 3 of Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

³The words "the Crown" were substituted for the word "Government" by para. 3 and Schedule XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "Government" was subsequently substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

of 1816.]

(Sections 8—11.)

Fourth.—To keep a register of all transfers of estates by sale (public or private), mortgage, lease or otherwise, and to attest such transfers at the request of the parties, without fee or gratuity, with their official signatures.

Fifth.—To compile information regarding local boundaries of *parganas* and estates; the number and names of villages, articles of produce, rates of rent, rules and customs established in each *pargana*; and to furnish at the requisition of the Courts of Justice and of the Collectors, all local information within their cognizance.

Sixth.—To assist at all admeasurements of land, whether undertaken by the officers of [the Government] in conformity to the Regulations, or by the landholders or *raiya*ts, and to record the same.

Seventh.—To prepare and keep the information and accounts directed in this or any future Regulation, in such manner and form as may be from time to time prescribed by the Board of Revenue.

Eighth.—To report to the Collector the death of a *mālguzār* and the name of his heirs, and to keep a register of all successions to lands.

8. Persons who may be selected to fill the office of *kānungo* are hereby prohibited from holding farms, or from becoming sureties for farmers or *zamindars*, within the local limits of their official duties.

Kānungos
not to hold
farms or
become
sureties.

9. On the death, resignation or removal of a *kānungo* the records of the office are to be made over to his successor, and the Magistrate of the *zila* is enjoined, on the application of the Collector, to interpose his authority, in all cases in which it may be necessary to enforce the surrender of such records.

Transfer of
records to
successors.

10. The refusal or manifest evasion of any person in possession of the records mentioned in the preceding section to deliver them up on the requisition of the Magistrate is hereby declared to subject the party so offending, on proof thereof, to the penalties prescribed ²* * for resistance to the process of the Magistrate.

Punish-
ment on
refusal to
give them
up.

11. Nothing contained in this Regulation shall be construed to preclude the ¹[State Government] from exercising the right of decreasing the number of *kānungos*; of abolishing the office in any *pargana* where from local circumstances the duty may be performed by less than two persons or by the *kānungos* in a neighbouring *pargana*; nor from exercising the

Right of
Govern-
ment to
vary
number of
kānungos.

¹See foot-note 3 on page 140, *ante*.

²The words "by the Regulations," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

³See foot-note 1 on page 140 *ante*.

[Ben. Reg. V of 1816.]

(Section 12.)

right to increase the number of *kánungos* in any *pargana* where from circumstances more than two may be found necessary.

Collectors
to report
when
variations
are neces-
sary.

12. The Collectors of *Cuttack* and *Hijli*¹ are enjoined to report to ²[the State Government], through the usual channel, all instances wherein they may deem it expedient to increase or diminish the number of *kánungos* in a *pargana*, with their reasons at large for such opinion.

¹The words printed in italics are obsolete, this Regulation having been extended to the whole of the former Province of Bengal by the Bengal *Kánungos and Patwáris Regulation, 1819* (I of 1819), sec. 4(*I*).

²The words "the Provincial Government" were substituted for the word "Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was substituted for the word "Provincial" by paragraph 4(*I*) of the Adaptation of Laws Order, 1950.

Bengal Regulation XII of 1817. (The Bengal Patwaris Regulation, 1817).

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- 34. In what cases Courts prohibited from taking cognizance of complaints of *patwaris*.
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Bengal Regulation XII of 1817 (The Bengal Patwaris Regulation, 1817.)¹

EXTENDED BY	Ben. Reg. 1 of 1819.
SUPPLEMENTED	Act XX of 1848.
SHORT TITLE GIVEN	Act I of 1903.
REPEALED IN PART	{ Act XVI of 1874. Act XII of 1876.
REPEALED IN PART AND AMENDED	{ Act XII of 1891. Act I of 1903. Ben. Act I of 1939.
ADAPTED	(a) The Government of India (Adaptation of Indian Laws) Order, 1937. (b) The Adaptation of Laws Order, 1950.

(12th August, 1817.)

*A Regulation for securing the better administration of the
office of Patwari²* * **

1. The existing Regulations regarding *patwāris* have been found to be in many respects defective, and great difficulties and delays have consequently been experienced in the division of estates, the adjustment of the revenue to be assessed on their respective shares, the investigation of summary and other suits for rents, the decision of disputes relating to the limits of estates and villages, and the execution of decrees of the Courts of Judicature, in regard to the possession and property of land :

Preamble.

the reform of the office appears therefore to be an object of the highest importance : ²* * *

The following rules have therefore been enacted ³* *

2. [*Repeal of enactments relating to appointment of patwāris.*]*—Rep. by the Repealing Act, 1874 (XVI of 1874).*

3. Every village paying, or liable to pay, the public revenue shall have a separate *patwāri*, except in cases where the Board of Revenue or other authority exercising the power of that Board shall, in consideration of former usage or other sufficient cause, authorise one *patwāri* to do the duty of two or more villages, or direct two or more *patwāris* to be established in a single village.

Every village to have separate *patwāri*.

4 to 6. [*Every village to have a separate patwāri; continuation of patwāris now in office; procedure in nominating patwāris.*]*—Rep. by the Repealing Act, 1874 (XVI of 1874).*

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Regulation was extended to the former Province of Bengal generally by the Bengal Kánungos and Patwāris Regulation, 1819 (I of 1819), sec. 4(2).

²The words in the title and sec. 1 as to local extent, which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

³The clause in sec. 1 as to commencement and local extent, was repealed, *ibid*.

(Sections 7—10.)

Vacancies
how filled
up.

7. Whenever a vacancy may occur in the office of *patwāri*, such vacancy shall be filled on the nomination of the *zamindar* or other landholder or farmer, engaging with ¹[the Government] for the public revenue, who is hereby enjoined to report such nomination to the Collector of the district within one month after the vacancy has taken place :

Provided, however, that in such nomination the *zamindar* or other landholder or farmer shall be generally guided by the custom which may heretofore have prevailed in the village in respect to the succession of *patwāris*, and shall not deviate therefrom without previously obtaining the sanction of the Collector, and it shall be the duty of the Collectors carefully to see that this rule is observed, and particularly that the just rights of the inferior *pattidārs*, or sharers in joint undivided estates, and of dependent *talukdars*, or other under-tenants of the lands, as connected with the appointment of *patwāris*, are duly maintained.

Procedure
of Collector
on receiv-
ing
nomination
of
patwāri.

8. On receiving the report of the nomination of a *patwari*, as directed to be made in the foregoing section, the Collector is to insert the name of the party in the register of *patwāris* for his district, unless he shall see good and sufficient ground to object to the person so nominated as disqualified for the office, in which case he is immediately to submit his objections to the Board of Revenue, ²* * * * * and the Board ³* * * will decide whether the *zamindar* or farmer shall be called upon to nominate another person, or pass such other order on the question as may appear just and right.

Rules
regarding
patwāris
in joint and
undivided
estates.

9. The proprietors of joint and undivided estates engaging jointly for the public revenue shall be considered jointly and severally bound ⁴* * * * * to nominate a *pātware* in the mode prescribed in ⁵* * * * * this Regulation, or to show sufficient cause for their failing to do so.

Rules as to
patwāris
in *khas*
estates.

10. In estates held *khas*, and in estates under the superintendence of the Court of Wards, the *patwāri* shall be appointed by the Collector.

¹The words "the Crown" were substituted for the word "Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "Government" was subsequently substituted for the word "Crown" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

²The words "the Board of Commissioners, or the Commissioner in Bihar and Benares as the case may be," which were repealed by the Repealing Act, 1876 (XII of 1876), are omitted.

³The words "or Commissioner," were repealed, *ibid*.

⁴The words and figure "to furnish the Collector with the statement required in section 4 and," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

⁵The words and figures "sections 5 and 7 of" were repealed, *ibid*.

of 1817.]

(Sections 11—14.)

11. Should any *zamindar* or other proprietor or farmer refuse or omit ¹* * * to nominate a *patwári* in the cases provided for in ²* * * this Regulation within the time prescribed ³* * *, and shall fail to show good cause for such neglect or failure, it shall be competent to the Collector, with the approval of the Board of Revenue, ⁴* * * to levy a daily fine upon him until a *patwári* is nominated, or, with such approval, himself to nominate a qualified person for the office.

Penalty in cases of refusal or omission to comply with rules.

12. Whenever a *zamindar* or farmer engaging with ⁵[the Government] for the public revenue may wish to remove a *patwári* from office, he is to state his reasons for so doing to the Collector of the district, who, if they appear good and sufficient, will authorize the removal of the *patwári*, but not otherwise.

Procedure of zamindars wishing to remove *patwári*.

13. Any *zamindar* or other landholder or farmer of land removing a *patwári* from office without the authority of the Collector obtained in the mode prescribed in the preceding section shall be punished by a fine not exceeding fifty rupees for the first offence and one hundred rupees for the second offence ;

Penalties for removing *patwári* without authority.

and if it should appear, on investigation by the Collector, that the removal was unjust and without sufficient cause, the said *zamindar* or other landholder or farmer of land shall be further subject to a daily fine, with the approbation of the Board of Revenue ⁶* * * but not otherwise, until the *patwári* be restored.

14. Whenever the inferior *pattidárs*, or sharers, or the *raiýats*, or under-tenants of a village may petition the Collector for the removal of the *patwári*, the Collector shall direct such removal, and shall call upon the *zamindar* or other landholder or farmer of land engaging with ⁵[the Government] for the public revenue to appoint another *patwári* :

Patwáris removable on representation of under-tenants.

Provided the reasons adduced for praying such removal appear to the Collector good and sufficient, but not otherwise.

¹The words and figures "to furnish the statement required by section 4 or," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

²The words and figures "sections 5 and 7" were repealed, *ibid*.

³The words "in those sections," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

⁴The words "the Board of Commissioners, or the Commissioner in Bihar and Benares, as the case may be," were repealed, *ibid*.

⁵See foot-note 1 on page 148, *ante*.

⁶The words "the Board of Commissioners, or the Commissioner in Bihar and Benares," which were repealed by the Repealing Act, 1876 (XII of 1876), are omitted.

(Ben. Reg XII)

(Sections 15—18.)

Procedure
of Collector
desiring to
remove
patwáris.

15. Whenever a Collector shall see ground to desire the removal of a *patwári* for neglect of duty or other sufficient cause, he is to state his reasons to the Board of Revenue, ¹* *
²* * , who will authorize the removal or not, as may seem proper.

Duties of
patwáris.

16. The duties of the *patwári* shall be—

First.—To keep such registers and accounts relating to the village or villages to which he is appointed, in such manner and form as has heretofore been the custom, or in such other mode as may be hereafter prescribed by the Board of Revenue, ¹* * * together with such further registers and accounts as may be directed by those authorities respectively.

Second.—To prepare and deliver to the *kánungo* of the *pargana*, at the expiration of every six months, a complete copy of the aforesaid accounts showing distinctly the produce of the *kharif* and *rabi* harvests.

Third.—To perform all other duties and services which it has been customary for him to execute.

Trans-
mitting
and
recording
patwáris
accounts.

17. The Board of Revenue ¹* * * * will determine on the mode in which the accounts rendered by the *patwári* to the *kánungo* shall be brought forward by the latter, and recorded in the office of the Collectors.

Payment
of *patwáris*,
and adjust-
ment of
their allow-
ances in
certain
cases.

18. The *patwári* is to be paid hereafter in the same mode as he is now paid, whether in money, or in grain, or in land, or in any other legal manner whatsoever; but it shall be the duty of the several Collectors to complete an account of the mode in which such payment is made in the different *parganas* or other local divisions of their districts, and to submit the result of their researches to the Board of Revenue or other authority exercising the powers of that Board; and it shall be competent to the Board of Revenue or other authority aforesaid, with the sanction of the ²[State Government], to increase or reduce the amount of remuneration paid to the *patwáris* and to alter or modify the mode of its payment, in any case in which sufficient cause for the adoption of such a measure shall exist.

¹The words "Board of Commissioners, or the Commissioner in Bihar and Benares," which were repealed by the Repealing Act, 1876 (XII of 1876), are omitted.

²The words "as the case may be" which were repealed by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939), are omitted.

³The words "Provincial Government" were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order 1937, and the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

of 1817.)

(Sections 19—23.)

19. Where no *patwari* has hitherto been appointed, the amount of the remuneration to the *patwari* who may be appointed under this Regulation, and the mode of its payment, shall be regulated by the Collector, with reference to the usage of the adjoining villages.

Remuneration of *patwaris* in villages where none are now appointed.

20. If the remuneration, which a *patwari* has heretofore regularly received or which may be assigned to him by the Collector or other competent revenue authority, be denied to him by the parties who have hitherto paid it, or who may have been directed to pay it by the said authority, he is at liberty to complain against the person so withholding his dues to the Collector, who will proceed to an immediate investigation of the facts, and decide according to the usage of the village; and the Collector is hereby authorized to compel payment of the amount due to the *patwari*, and to fine the offending party according to his situation and circumstances in life :

Procedure on refusal of payment of established remuneration to *patwaris*.

Provided always that the fine in no instance exceed fifty rupees.

21. In all cases in which the decision of the Collector is to be governed by usage, it shall be made an invariable rule to insert in the original proceedings on the case the attested report of the *kánungos* of the *pargana*, as to the custom or usage in reference.

Local usage of *parganas* to be reported by *pargana kánungo*.

22. Collectors of land-revenue are hereby empowered to summon the *patwari* of any village or villages within their respective districts, whenever there may be occasion for his attendance on any matter connected with the duties of his office, and to require him to produce all accounts relating to the lands, produce, rents, collections and charges of the village or villages the accounts of which may be kept by him, and to examine him on oath to the truth of such accounts, and on any other matters relating to such accounts, or regarding the lands, produce, rents, collections and charges of the village or villages to which the said *patwari* may belong.

Power to summon *patwari* and to examine him on oath to the truth of his accounts.

When a Collector shall require the attendance of a *patwari* for the purpose above stated, he is to serve such *patwari* with a written notice under his official seal and signature, stating the purpose for which his attendance is required, and the papers (if any) which he is to bring with him.

23. If any *patwari* shall neglect or omit to produce his original accounts on the requisition of a Collector, or to give his evidence respecting them, the Collector is hereby authorized and empowered to cause the said *patwari* to be apprehended, and to order him to be confined in the *Diwani* jail of the district until he produce his accounts, or show sufficient cause for not producing them.

Power to compel *patwaris* to produce their accounts.

(Sections 24-27.)

In such cases the *patwāri* shall be sent by the Collector with a *rubakari* to the Judge of the * * zila, stating the purport of the order passed against him ; and the Judge shall, on those grounds, commit the *patwari* to jail, and detain him until he produce the accounts, or until the Collector applies for his release.

Patwāris to produce accounts when required by Courts of Justice.

24. In like manner *patwāris* shall produce all accounts relating to the lands, produce, collections and charges of the village or villages the accounts of which may be kept by them respectively, and furnish every information and explanation that may be required regarding them, whenever they may be required by any Court of Justice, in any suit that may be depending before the Court ;

and if any *patwāri* shall neglect or omit to attend with his accounts when required, for the adjustment of any matter or dispute depending in Court, the Courts are authorized to order such *patwāri* to be committed to close custody until he produce the accounts, or show sufficient cause for not having produced them.

Power to require attendance of patwāris on officers deputed to examine village accounts and to grant commission to swear patwāris.

25. In any case in which a Collector of land-revenue shall have occasion to depute an officer to examine the accounts of any village or villages, he is authorized to require the *patwāris* to attend such officer, and the Collector is further empowered to grant to such officer a commission to swear the several *patwāris* whose accounts are to be inspected, inserting in the commission the name of each *patwāri* to be sworn ;

and if any such *patwāri* shall neglect or refuse to attend such officer with his accounts, or to give his evidence respecting them, when duly required to do so by a written notice from the Collector, the Collector is hereby authorized and empowered to proceed against such *patwāri* in the same mode as if he had refused or neglected to attend or to give his evidence before the Collector himself.

26. [*Patwāris giving false depositions, when guilty of perjury.*]*—Rep. by the Repealing Act, 1876 (XII of 1876).*

Punishment for patwāris falsifying or mutilating village accounts.

27. * * * Any *patwāri* who shall alter, fabricate, falsify or mutilate the accounts of the village to which he belongs, or shall furnish to the *kānungo* or Collector false, fabricated or mutilated copies of those accounts, shall be held and considered guilty of forgery, and shall be liable, on conviction, ³* * * to the penalties which are or may be prescribed for that offence ⁴* * * :

¹The words "City or," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

²The words "In like manner" were repealed, *ibid.*

³The words "before a Court of Circuit," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

⁴The words "in the Regulation," were repealed, *ibid.*

of 1817.]

(Sections 28—31.)

and any person who shall cause or procure any such forgery shall be liable to the same penalties as those convicted of having actually committed the offence.

28. [Existing rules requiring the attendance of proprietors, etc., of lands sold or divided, declared still in force.]—Rep. by the Repealing Act, 1876 (XII of 1876).

29. ¹* * * whenever an estate or the portion of an estate may be directed to be disposed of at public sale, or may be transferred by the private act of the proprietor or proprietors, or when an estate may be divided pursuant to a decree of a Court of Judicature or at the request of one or more of the proprietors, or when an estate or portion of an estate may be under attachment, the Collector shall be authorized to require the attendance of all descriptions of ²* * agents employed by the proprietors or farmers of such estates or farms in the management of their lands, or keeping the accounts relating to them, and to examine or to cause them to be examined on oath, touching such accounts, in the same manner as he is authorized by sections 22 and 25 of this Regulation to require the attendance to and take or cause to be taken the examination of patwāris ;

Power to require attendance of agents of proprietors whose estates are to be sold, transferred or divided and to cause them to be examined on oath touching accounts.

and if such agents shall refuse or neglect to attend the Collector or his officer, when their attendance may be duly required, or to give their evidence, the Collector is authorized and empowered to proceed against them in the same manner as is prescribed in the case of patwāris refusing or neglecting to attend.

30. ³* * * the rules contained in ⁴[section] ⁵* * * 27 shall be held and considered applicable to all such ⁶* * agents employed by proprietors or farmers of land, in the management of their estates or farms, or in keeping the accounts relating to them.

Section 27 applied to agents.

31. Whenever a Collector of land-revenue, or other officer vested with the powers of a Collector may in any case connected with his public duty, but not provided for in this or any other Regulation in force, have occasion to

Procedure in cases not provided for when attendance of proprietors or farmers with accounts is required.

¹The words "In like manner" which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

²The word "Native," was omitted by para. 3 and the Sixth Schedule of the Adaptation of Laws Order, 1950.

³The words "Provided further that," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

⁴This word was substituted for the word "sections" by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

⁵Section 30, as far as it relates to sec. 26, having been repealed by the Repealing Act, 1876 (XII of 1876), the figure and word "26 and" have been omitted.

[Ben. Reg. XII

(Sections 32, 33.)

require the attendance of a *zamindar* or other proprietor or farmer of lands or of the *gumáshta* or other officer or agent of such proprietor or farmer, with the accounts of such lands, he shall report the circumstances to the Board of Revenue ¹* * * * and the ²[Board is] hereby empowered to grant authority to the Collector or other officer aforesaid, to require the attendance of the proprietor or farmer, or of the *gumáshta* or other officer or agent, with all accounts relating to the lands in their possession or management.

Notice to person required to attend.

32. A written notice shall in such cases be issued by the Collector or other officer to the party whose attendance is required, stating the purpose for which he is summoned, and the papers (if any) which he is to bring with him ;

Penalty for omission or refusal.

and, if the proprietor or farmer shall omit or refuse to attend, or cause his officer or agent to attend, by the time prescribed in the Collector's requisition, with the accounts and information required, the Board of Revenue ³* * * * are authorized and empowered to impose upon him such daily fine, to be payable daily until he complies with the Collector's requisition, as they may think adequate to his situation and circumstances in life ; ⁴* * * *

The fine ⁵* * * is to be levied by the same process as is prescribed for the recovery of arrears of revenue.

Provision in cases where appointment of village *patwáris* is inexpedient.

33. In cases in which, from local or other sufficient causes, it may appear impracticable or inexpedient to cause the appointment in any estate or farm of *patwáris*, in the mode prescribed in this Regulation, as, for instance, in certain estates consisting chiefly of hills and forests in the south-western frontier, and in very small *maháls*, the accounts of which are kept by the proprietors themselves, it shall be competent to the Board of Revenue ³* * * * to suspend its operation in such estates or farms :

¹The words "the Board of Commissioners, or the Commissioner in Bihar and Benares, according as he may be subject to one or the other of those authorities," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

²These words were substituted for the words "Boards are" by the Amending Act, 1891 (XII of 1891). The words "and Commissioner aforesaid," which occurred after "Boards," were repealed by the Repealing Act, 1874 (XVI of 1874), and are omitted.

³The words "Board of Commissioners and Commissioner in Bihar and Benares, as the case may be," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

⁴The words "reporting, however, the amount for the information of the Governor General in Council," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

⁵The words "when confirmed by Government," were repealed, *ibid*.

of 1817.]

(Sections 34—36:)

Provided, however, that in all such cases the person by whom the village accounts are kept, whether proprietor or farmer, or *gumāshta* or other officer, shall furnish the *kānūngo* of the *pargana* with such accounts and statement, as the Collector, with the approval of the Board ¹* * * may direct ; and shall be subject to the provisions contained in sections 22, 23, 24, 25 ²* * * and 27 of this Regulation ; and the proprietors or others by whom they may be employed shall likewise be subject to the provisions contained in ³[section] ⁴* * * 27.

34. No Court of Judicature shall take cognizance of the complaint of a *patwāri* against the landholder, or the tenants of a village, for refusing to remunerate his labours, nor shall any Court of Judicature take cognizance of any complaint against a Collector for, or on account of, any decision passed by him in virtue of the powers with which he is vested by this Regulation.

In what cases Courts prohibited from taking cognizance of complaints of *patwāris*.

⁵35. (1) Any person aggrieved by a decision or order of a Collector under section 20 of this Regulation may appeal within six months from the date thereof to the Commissioner of the Division.

Appeal to Commissioner from decision or order under section 20.

(2) The Commissioner may reverse or alter any such decision or order in appeal.

36. All sums adjudged by the Collector in favour of a *patwāri* under section 20, and all fines directed to be levied by this Regulation, shall be recoverable by the same processes as arrears of the public revenue ; and all such fines, when recovered, shall be carried to the account of the ⁶[the State Government].

Recovery and appropriation of fines, etc.

¹The words "or Commissioner," were repealed by the Amending Act, 1891 (XII of 1891).

²Section 33, so far as it relates to sec. 26 having been repealed by the Repealing Act, 1876 (XII of 1876), the figure "26" has here been omitted.

³This word was substituted for the word "sections" by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

⁴For the reason stated in foot-note 2, the figure and word "26 and" have here been omitted.

⁵This section was substituted for the original sec. 35 by the Amending Act, 1891 (XII of 1891).

⁶The words "the Provincial Government" were substituted for the word "Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was substituted for the word "Province" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

Bengal Regulation I of 1819

(The Bengal Kanungos and Patwaris Regulation, 1819.)¹

SHORT TITLE GIVEN	...	Act I of 1903.
REPEALED IN PART	...	{ Act XII of 1873. Act XII of 1891.
REPEALED IN PART AND AMENDED		Act I of 1903.
ADAPTED	...	{ (a) The Government of India (Adaptation of Indian Laws) Order, 1937. (b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948. (c) The Adaptation of Laws Order, 1950.

(5th February 1819.)

*A Regulation² * * * for re-establishing Kanungos and reforming the office of Patwari throughout the Province of Bengal; and for explaining and modifying certain parts of Regulation XII, 1817.³*

1. to 3. [Preamble; controlling Revenue-authorities in Dinajpur, Rangpur and Gorakpur].—Rep. by the Repealing Act, 1873 (XII of 1873).

4. First.—Kanungos shall be appointed throughout the⁴[State] of⁵[West Bengal] in the same manner, and for the performance of the same duties, as are perscribed in Regulation V, 1816,⁶ in regard to the district of Cuttack, the *pargana* of Pataspur and its dependencies; and all the rules contained in the Regulation aforesaid are hereby extended generally to the⁴[State] of⁵[West Bengal].

Appoint-
ment of
kanungos
through-
out West
Bengal.

Second.—The provisions of Regulation XII, 1817,⁸ are in like manner hereby extended to the several districts of the said⁴[State] to which they have not yet been applied.

Regula-
tion XII
of 1817
extended.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Regulation extends to the whole of the former Province of Bengal—see sec. 4(1); but it may be suspended in any *matal*—see sec. 4(4).

²The words "for replacing the districts of Dinajpur and Rangpur under the management of the Board of Revenue; for extending the authority of the Board of Commissioners in Bihar and Benares to the district of Gorakpur;" which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

³The Bengal *Patwari* Regulation, 1817.

⁴Substituted for the word "Province" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁵Substituted for the word "Bengal" by para. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

⁶The Bengal *Kanungos* Regulation, 1816.

[Ben. Reg. I]

(Section 4.)

Nomina-
tion of
kanungos
by persons
other than
Collectors.

Third.—Provided, however, that in cases in which it may not appear advisable, from whatever cause, to leave the selection and nomination of the *kanungos* to the Collector of the district, it shall be competent to the ¹[State Government] to appoint such other officer specially to perform that duty, as ²[it] may judge expedient; and the officer so appointed shall have and exercise, during such period as the ¹[State Government] may direct, the same powers as are vested generally in Collectors of land-revenue under the provisions of Regulation V, 1816³, and Regulation XII, 1817⁴.

But nothing herein contained shall be construed to preclude the person holding permanently the office of Collector in such district from discharging the ordinary duties of his situation under the general rules and regulations applicable to that branch of the public service.

Power to
suspend
operation
of rules
regarding
kanungos
and
patwaris.

Fourth.—Provided further that it shall be competent to the ¹[State Government] to suspend the operation of the rules contained in this or any former Regulation, regarding *kanungos* and *patwaris*, within any *mahals*, in which the establishment of such officers, as prescribed in those rules, may appear to be inexpedient.

Board of
Revenue
may
alter
duties of
kanungos.

Fifth.—Provided likewise that it shall be competent to the Board of Revenue or other authority exercising the powers of that Board to make such alteration in the duties to be performed by *Kanungos* as local circumstances shall suggest ⁵* * *

And
suspend
operation
of
Regulation
XII, 1817,
in certain
places.

Sixth.—Provided also that it shall be competent to the Board of revenue to suspend by proclamation the operation of the rules of Regulation XII, 1817⁵, in the districts of Chittagong ⁶* * * and in any other parts of the country in which individual estates may generally be of inconsiderable extent, until they shall have determined, under

¹The words "Provincial Government" were substituted for the words "Local Government" by paragraph 4(7) of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was substituted for the word "Provincial" by paragraph 4(7) of the Adaptation of Laws Order, 1950.

²The word "he" in the original text is to be read as if the word "it" were substituted therefor—see the Amending Act, 1903 (I of 1903).

³The Bengal *Kanungos* Regulation, 1816.

⁴The Bengal *Patwaris* Regulation, 1817.

⁵The words and figures "anything in section 7, Regulation IV of 1808 and other corresponding enactments, to the contrary, notwithstanding," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

⁶The words "and Sylhet," which were repealed by the Amending Act 1903 (I of 1903), are omitted.

of 1819.]

(Sections 5—7.)

the discretion vested in them by sections 3, 18 and 33 of that Regulation, the number of *patwaris* to be appointed or retained, the mode in which they are to be remunerated and the *mahals* to be permanently exempted from its general operation.

5. In all cases in which any village or villages, or any lands whatsoever the accounts of which may be kept by a single *patwari*, shall be held by two or more persons under distinct engagements with Government, it shall be competent to the Collector, with the approval of the Board of Revenue or other authority exercising the powers of that Board, to assume, the direct nomination and appointment of such *patwari*, with or without a reference to the proprietors.

Collector may nominate and appoint *patwari* in certain cases.

But in all such cases the Collector shall deviate as little as possible from established usage, and shall be careful to consult the inclinations, and maintain the interests, of all persons connected with the *mahals* in question.

6. In explanation of section 11, Regulation XII, 1817¹, it is hereby declared and enacted that, if any proprietor or farmer of land shall refuse or omit to furnish the statement required by section 4² of that Regulation within the period therein prescribed, or at any subsequent period, when called upon to do so by the Collector or other officer exercising the powers of Collector, it shall be competent to the Collector or other officer aforesaid, with the approval of the Board of Revenue or other authority exercising the powers of that Board, to levy a daily fine upon such proprietor or farmer, until the statement required be furnished, to such amount as may appear proper, with reference to the circumstances of the case, and to the condition in life of the offender.

Explanation of section 11, Regulation XII, 1817.

7. The penalties prescribed in section 13, Regulation XII, 1817¹, for the illegal removal of a *patwari* from office, by a *zamindar* or other proprietor or farmer of land, are hereby declared applicable to all persons whatsoever who may, without due authority, remove from office any *patwari* duly constituted or appointed; or who may oppose a *patwari* so appointed or constituted, in the performance of his duties, or who may prevent his performing them, or who may resist or evade the entry of a *patwari*, when duly appointed into the possession of his office.

Penalty for unauthorized removal, etc., of *patwari*.

¹The Bengal *Patwáris* Regulation. 1817.

²Section 4 of Ben. Reg. XII of 1817 was repealed by the Repealing Act, 1874 (XVI of 1874).

Bengal Regulation II of 1819

[The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.]

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7. What inquiry to be made.
8. Collector with sanction of Board may cause survey or measurement.
9. Collector may summon *patwaris*, and require accounts and examine on oath.
10. And may require attendance of person claiming land, with his accounts.
11. *First.*—Notice to such person.
Second.—(*Repealed.*)
12. Penalties on *patwaris* neglecting to produce accounts, falsifying them or giving false evidence.
13. *First.*—Lands may be attached, if holders neglect to furnish accounts. Inquiry in such cases.
Second.—Accounts not furnished to Revenue-authorities not afterwards to be received in evidence in suits to contest their decision.
Exception.
Third.—Fines for non-attendance of proprietor or agent, or for omission to furnish accounts.
14. Penalties for resistance of process.
Proviso.
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SECTION.

16. Procedure in respect of documents produced.
17. Witnesses for and against claim of Government to be examined.
18. Examination of documents.
19. *First*.—Collector's authority to summon witnesses and administer oath.
Second and Third.—(Repealed.)
20. Procedure on completion of inquiry.
21. *First*.—Procedure of Board on receipt of Collector's proceedings.
Second.—Final *rubakaris*.
Third.—In what cases decision of Board final.
Fourth.—If land declared liable to assessment, Collector to fix assessment.
22. *First*.—When party may be left in possession of land.
Proviso.
Second.—Procedure of Collector if party do not furnish full security.
Third.—Court may determine on sufficiency of security tendered.
Fourth.—Amount of security how regulated.
Fifth.—Security in case of *mukarraris*.
23. Final assessment.
24. *First*.—Limitation of suits in Civil Courts.
Proviso.
Second.—(Repealed.)
25. (Repealed.)
26. *First*.—Appeal from *Zila* to *Sadar* Court.
Second.—Procedure on such appeals.
27. (Repealed.)
28. *First*.—Validity of *farmans*, *sanads* or grants to be carefully ascertained.
Second.—Such deeds not to be received unless registered.
- 29, 30. (Repealed.)
31. *First*.—Regulation not to affect right of proprietors to waste-land guarantee at permanent settlement.
Second.—Not to warrant claim to additional revenue from lands permanently assessed on plea of error or fraud.
Exception.

Bengal Regulation II of 1819

[The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.]¹

SUPPLEMENTED	...	Ben. Regn. VII of 1822.
SHORT TITLE GIVEN	...	Act I of 1903.
REPEALED IN PART	...	{ Ben. Act VII of 1862. Act XII of 1873. Act XVI of 1874. Act XII of 1876.
REPEALED IN PART AND AMENDED.	...	{ Act XII of 1891. Act I of 1903.
AMENDED	...	{ Ben. Regn. IX of 1825. Ben. Regn. XIV of 1825. Ben. Regn. III of 1828.
ADAPTED	...	{ (a) The Government of India (Adaptation of Indian Laws) Order, 1937. (b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948. (c) The Adaptation of Laws Order, 1950.

(12th February 1819.)

A regulation for modifying the provisions contained in the existing Regulations, regarding the resumption of the revenue of lands held free of assessment under illegal or invalid tenures, and for defining the right of Government to the revenue of lands not included within the limits of estates for which a settlement has been made.

1. The rules contained in Regulations XIX² and XXXVII,³ 1793, relative to the resumption of the revenue of lands held free of assessment under illegal or invalid tenures, and the corresponding provisions enacted in subsequent years, having been found inadequate to secure the just rights of Government, have from time to time been partially repealed or modified. Preamble.

Those rules; however, are still in force within several of the districts subordinate to this Presidency, and the Regulations by which they have in other districts been superseded appear to be in several respects defective.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Regulation was passed for the whole of the former Province of Bengal—see the concluding paragraph of sec. 1.

It has been declared, by notification under the Scheduled Districts Act, sec. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), sec. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

²The Bengal Revenue-free Lands (Non-Badshahi Grants) Regulation, 1793.

³The Bengal Revenue-free Lands (Badshahi Grants) Regulation, 1793.

(Section 2, 3.)

It further appears to be necessary, in order to obviate all misapprehension on the part of the public officers, or of individuals, to declare generally the right of Government to assess all lands which, at the period of the decennial settlement, were not included within the limit of an estate for which a settlement was concluded with the owners, not being lands for which a distinct settlement may have been made since the above period, nor lands held free of assessment under a valid and legal title; and at the same time formally to renounce all claim on the part of Government to additional revenue from lands which were included within the limits of estates for which a permanent settlement has been concluded, at the period when such settlement was so concluded, whether on the plea of error or fraud, or on any pretext whatever, saving, of course, *mahals* expressly excluded from the operation of the settlement.

With the view, therefore, of establishing, on proper principles, one uniform course of proceeding in resuming the revenue of lands liable to assessment, so that the dues of Government may be secured without infringement of the just rights of individuals, the following rules have been enacted, to be in force from the date of their promulgation throughout the [territories] immediately subordinate to the Presidency of Fort William.

2. [Repeals.]—*Rep. by the Repealing Act, 1874 (XVI of 1874).*

3. *First.*—It is hereby declared and enacted that all lands which, at the period of the decennial settlement, were not included within the limits of any *pargana*, *mauza*, or other division of estates for which a settlement was concluded with the owners, not being lands for which, a distinct settlement may have been made since the period above referred to, nor lands held free of assessment under a valid and legal title of the nature specified in Regulations XIX¹ and XXXVII², 1793, and in the corresponding Regulations subsequently enacted, are and shall be considered liable, to assessment in the same manner as other unsettled *mohals*; and the revenue assessed on all such lands, whether exceeding one hundred *bighas* or otherwise, shall belong to ⁴[the Government]:

¹Substituted for the word "Provinces" by the para. 3 and the Sixth Schedule of the Adaptation of Laws Order, 1950.

²The Bengal Revenue-free Lands (Non-Badshahi Grants) Regulation, 1793.

³The Bengal Revenue-free Lands (Badshahi Grants) Regulation, 1793.

⁴The words "the Crown" were substituted for the word "Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "Government" was subsequently substituted for the word "Crown" by para. 4(1) of the Adaptation of Laws Order, 1950.

Lands not included in decennial settlement, etc., liable to assessment, except lands held free of assessment under valid title.

of 1819.]

(Section 4.)

Provided, however, that nothing in the above rule shall be construed to affect the rights reserved to zamindars, talukdars, and other proprietors of estates with whom a permanent settlement has been concluded, to the exclusive enjoyment of the rent assessed on lands held on an invalid tenure, free of assessment, within the limits of their respective estates and taluks, and of which the extent may not exceed one hundred bighas if in ¹[West Bengal], [Bihar or Orissa] ²* * *

Proviso.

Second.—The foregoing principles shall be deemed applicable not only to tracts of lands such as are described to have been brought into cultivation in the Sundarbans, but to all chars and islands formed since the period of the decennial settlement, and generally to all lands gained by alluvion or dereliction since that period, whether from an introcession of the sea, an alteration in the course of rivers or the gradual accession of soil on their banks.

Same principle applicable to chars and alluvion lands

Third.—The same principle shall likewise be deemed applicable to all land which, though included at the period of the permanent settlement within the limits of taluks held by individuals under special pattas from the Collector, such as the patitabadi and jangalbari taluks in the districts of the 24-Parganas and Jessore, may not have been permanently assessed at the abovementioned period :

Also to lands included within particular taluks.

Provided, however, that in respect to such lands, if in the possession of the original patta-holder, or his legal representative, the conditions of the patta in regard to the assessment of the land included within the limits specified in that instrument shall be strictly maintained.

Proviso.

4. The several rules prescribed in Regulations XIX³ and XXXVII⁴ of 1793. ⁵* * * and XII of 1805⁵ for determining the validity of grants for holding lands exempt from the payment of public revenue, are hereby declared applicable to grants for holding lands under mukarrari or other tenures limiting the demand of ⁷[the Government] :

Application of existing rules to grants for holding lands under mukarrari or other tenures.
Proviso.

Provided, however, that nothing in this section shall be construed to affect the rules contained in Regulation VIII, 1793⁶.

¹Substituted for the word "Bengal" by para. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

²The words "and fifty bighas if within the province of Benares," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

³The Bengal Revenue-free Lands (Non-Badshahi Grants) Regulation, 1793.

⁴The Bengal Revenue-free Lands (Badshahi Grants) Regulation, 1793.

⁵The words and figures "and Regulations 41 and 42 of 1795, Regulations 31 and 36 of 1803, Regulation 8," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

⁶The Cuttack Land-revenue Regulation, 1805.

⁷See foot-note 4 on page 164, ante.

⁸The Bengal Decennial Settlement Regulation, 1793.

(Section 5.)

relative to the assessment of lands held under valid grants or leases of the above nature ' * * * .

Power to direct investigation regarding liability of lands to be assessed.

5. *First.*—Whenever a Collector of revenue or other officer exercising the powers of Collector shall have reason to believe that any lands lying within the sphere of his official control are liable to assessment, either as being held under an invalid tenure free of assessment, or at an inadequate *jama*, or as being liable to assessment on the principles stated in section 3 of this Regulation, he shall report the circumstances to the Board of Revenue or other authority exercising the powers of that Board, who, should they be of opinion that proper grounds exist for inquiry, shall direct the Collector or other officer aforesaid to enter on an investigation of the case in the manner hereafter mentioned.

Notice to party.

Second.—The Collector, on receiving the authority of the Board of Revenue, shall call the party before him by a notice stating the demand of ²[the Government] on the lands, and requiring him to attend either in person or by *vakil*, within the period of one month, and to produce all *sanads* or other writings in virtue of which he may possess the lands, or under which they may have been, or may be, claimed to be held free of assessment, or at a fixed *jama*.

Or to his agent if accredited agent reside at *sadar* station.

Third.—If the persons whose lands it is proposed to assess have an accredited agent at the *sadar* station, with general powers to act for his principal, the notice to be issued under the preceding clause shall be tendered to such agent, to be communicated by him to his principal, and the agent's acknowledgment to be endorsed upon it shall be accepted as a sufficient service of it, if he desirous of giving such acknowledgment in preference to the notice being served on the person of his principal by a *chaprasi* or peon of the Collector.

Notice on principal to be served through *nazir* by single peon.

Fourth.—If the person, the revenue of whose lands it is proposed to resume, shall not have an accredited agent at the *sadar* station of the description above-mentioned, or if such agent shall decline receiving the notice for communication to his constituent, and the defendant be resident within the Collectorship, it shall be served on him through the *nazir* of the Collector by a single *chaprasi* or peon, who shall require the acknowledgment of the party to be endorsed upon it, or, if he be absent from his usual place of residence, the acknowledgment of his principal agent, or of any person acting for him during his absence.

¹The words and figures "nor to alter the provisions contained in Regulation I, 1815, by which tenures of that description are declared liable to assessment on the death of the grantee," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

²See foot-note 4 on page 164, *ante*.

of 1819.]

(Section 6.)

If the party be resident within the jurisdiction of any other Collectorship than that in which the lands proposed to be assessed are situated, the notice shall be transmitted to the Collector of the district in which the party may reside, to be served in the manner above directed.

Notice how served if party reside in another jurisdiction.

If the party be neither resident within the Collectorship in which the lands in question may be situated, nor in any other Collectorship, the notice shall be served upon his agent or representative in charge of the lands.

Fifth.—Provided always that, if any party or his agent in charge of his land, on whom a notice may be served in the manner above prescribed, shall refuse to acknowledge the receipt of it when required by the person serving it, the tender of the notice to such party or his agent shall be taken for a sufficient service; such tender to be proved by the evidence of two persons residing on the lands or in the nearest village.

If acknowledgment be refused, tender of notice sufficient service.

Sixth.—The Collector shall, in the notice summoning the party, warn him that, if he withhold any writings of the nature specified in the second clause of this section within the period prescribed, they will not afterwards be received unless he shall show good and sufficient cause for not producing them and shall assign such cause on his appearing before him.

Contents of notice.

6. *First.*—If the holder of such lands to whom a notice may have been issued as directed in the preceding section shall abscond, or is not after diligent search to be found, or shall shut himself up in any house or building, or retire to any place, so that the notice cannot be served upon him, the Collector or other officer exercising the power of Collector, on receiving the *nazir's* return to this effect, shall issue a proclamation, to be affixed in some conspicuous part of his *cutcherry*.

If notice cannot be served, proclamation to be issued.

The proclamation shall be written [in the vernacular of the district], and it shall contain a copy of the former notice and a further notification to the party that, if he shall not appear on a day to be fixed (which shall not be less than fifteen days from the time that the proclamation may be fixed up), the Collector will proceed, without further notice, to hold the inquiry *ex parte*.

The Collector or other officer exercising the power of Collector shall likewise order a copy of the proclamation and notice to be fixed up, with all practicable despatch, on the outer door of the house in which the holder of the lands may have usually dwelt, or in some conspicuous place in the chief village within, or in the neighbourhood of, the lands proposed to be assessed.

Second.—The *nazir* shall return the order with an endorsement stating at what times and places the proclamation may have been fixed up.

Nazir's return how made.

¹These words were substituted for certain words by the Amending Act 1891 (XII of 1891).

(Sections 7—II.)

The return of the *nazir* shall be filed with the Collector's proceedings in the case.

If party does not appear, or refuses to answer, case to be investigated.

If the party shall not appear at the time limited in the proclamation, or if a party who may have been served with a notice shall not appear within the time therein limited, or if, having appeared, he shall refuse to give answer, the Collector shall proceed to investigate and decide upon the case in the same manner as if the party had appeared, answered and entered into proof.

What inquiry to be made.

7. In cases of land supposed to be liable to assessment under the provisions of section 3 of this Regulation, the Collector or other officer exercising the powers of Collector shall institute a full and particular inquiry into the circumstances and condition of the land in question at the period of the decennial settlement, and, in cases of alluvion land, into the period of its formation.

Collector with sanction of Board may cause survey or measurement.

8. When an inquiry in regard to land of the nature of that described in the forgoing section shall have been authorized, it shall be competent to the Collector, with the sanction of the Board of Revenue or other authority exercising the powers of that Board, previously obtained, to cause a survey or measurement to be made of all such lands, and of the estate to which such lands may be alleged to belong.

Collector may summon *patwaris*, and require accounts and examine on oath.

9. It shall likewise be competent to the Collector, in all cases of inquiry held under the provisions of this Regulation, to summon the *patwari*, *gumashta* or other person by whom the accounts relating to the lands proposed to be assessed, or to the estate to which the lands may be alleged to belong, are kept and to require him to produce all accounts relating to such lands or estate, and to examine him on oath to the truth of such accounts, and on any other matter relating to such accounts, or regarding such lands or estate, in the manner specified in section 22, Regulation XII of 1817.¹

And may require attendance of person claiming land, with his accounts.

10. It shall be further competent to the Collector in such cases, with the sanction of the Board of Revenue or other authority exercising the powers of that Board, to require the person claiming to be proprietor or farmer of the lands proposed to be assessed, or of the estates to which they are alleged to belong, to attend either in person or by representative, and to produce all the accounts relating to such lands or estate within a reasonable period, not being less than one week.

Notice to such person.

11. * * Whenever the Collector or person exercising the powers of Collector shall require the attendance of any proprietor or farmer, or of any *patwari* or *gumashta* or other officer for the

¹The Bengal *Patwadris* Regulation, 1817.

²The word "First" which was repealed by the Repealing Act, 1876 (XII of 1876), is omitted.

of 1819.]

(Sections 12, 13.)

purpose stated in the above section, he is to serve such proprietor or other person as aforesaid with a written notice under his official seal and signature, stating the purpose for which his attendance is required, the papers (if any) which he is to bring with him, and the period within which he is to attend.

Second. [Mode of serving notice.]—*Rep. by the Repealing Act, 1876 (XII of 1876).*

12. If any *patwari*, *gumashta* or other person by whom the accounts of lands are kept, and who may be summoned by a Collector [or Commissioner] under the provisions contained in sections 9 and 11 of this Regulation, shall neglect or omit to produce his original accounts on the requisition of the Collector [or Commissioner], or to give his evidence regarding them, or shall intentionally and deliberately give a false deposition on oath before the Collector [or Commissioner], when summoned and examined as aforesaid, or shall alter, fabricate, falsify or mutilate the accounts relating to such lands, or to the estate to which such lands are stated to belong, ¹[he] shall be and be held liable to the pains and penalties specified in sections 23 ²* * and 27 of Regulation XII, 1817³, according as the provisions of one or other of those sections may be applicable to the offence committed by him.

Penalties on *patwari* neglecting to produce accounts, falsifying them or giving false evidence.

13. *First.*—If the holder of any lands in regard to which the Collector shall have been authorised by the Board of Revenue or other authority exercising the powers of that Board to institute the inquiry described by section 7 of this Regulation shall refuse or neglect to furnish the accounts relating to such lands within the period specified in the Collector's requisition, the Board of Revenue or other authority exercising the powers of that Board shall be competent to direct the lands to be immediately attached, and the rents collected on account ⁴[of the Government], in the same manner as if the lands were the property ⁴[of the Government].

Lands may be attached, if holders neglect to furnish accounts.

In such cases, however, it shall still be the duty of the Collector to make a full inquiry into the title of the holder of the lands, and to transmit his proceedings to the Board who will decide whether the lands shall be deemed permanently liable to assessment.

Inquiry in such cases.

Second.—Provided further that, if the holder of any lands assessed under the rules of this Regulation shall institute a suit in Court to contest the decision of the Revenue-authorities, and shall produce any accounts or documents besides such as he may have delivered to the Collector, the accounts or documents so produced shall not be received by the Court in evidence, nor shall they have any weight in the decision, any more than if they had

Accounts not furnished to Revenue authorities not afterwards to be received in evidence in suits to contest their decision. Exception.

¹This word was inserted by the Amending Act, 1891 (XII of 1891).

²The figure "26," was repealed, *ibid*.

³The Bengal *Patwari* Regulation, 1817.

⁴The words "of the Crown" were substituted for the words "of Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "Government" was substituted for the word "Crown" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

(Section 14.)

never existed, unless he shall show good cause, to the satisfaction of the Court, for not having produced the said accounts or documents, and shall prove that he assigned such cause in answer to the Collector's requisition, or show good cause for not having done so.

Fines for non-attendance of proprietor or agent, or for omission to furnish accounts.

Third.—Provided also that, if any proprietor or farmer shall omit or refuse to attend, or to cause his officer or agent to attend, when duly summoned by the Collector [or Commissioner], by the time prescribed in the notice issued by the Collector [or Commissioner,] or shall omit or refuse to furnish the accounts or documents required, and to show sufficient cause for such omission, the Board of Revenue or other authority exercising the powers of that Board, are authorised and empowered to impose upon him such daily fine, to be payable daily, until he complies with the Collector's requisition, as they may think adequate to his situation and circumstances in life, reporting, however, the amount for the information of the ¹[State Government]:

The fine, when confirmed ²[by the State Government], is to be levied by the same process as is prescribed for the recovery of arrears of revenue.

Penalties for resistance of process.

14. If any *zamindar* or other person shall resist, or cause to be resisted, the attachment or measurement of lands which the Board of Revenue or other authority exercising the powers of that Board shall have authorized the Collector [or Commissioner] to attach or measure under the provisions of this Regulation, or shall resist or cause to be resisted any process duly issued by the Collector [or Commissioner] to compel a *patwari*, *gumashta* or other officer to produce his accounts, and to give his evidence respecting them under the provisions contained in section 9 of this Regulation, it shall be competent to the Board of Revenue or other authority exercising the powers of that Board, on being satisfied that he is guilty of the charge, to adjudge the *zamindar* or other person so offending to pay such fine to ¹[the State Government] as may appear to it proper, upon a consideration of his situation and circumstances in life, and of the offence which he may have committed, and to levy the fine in the mode prescribed for the recovery of arrears of revenue :

Proviso.

Provided, however, that, if the fine shall exceed five hundred rupees, the Board shall submit a report of the case to the ¹[State Government], and shall not proceed to levy the fine until they

¹The words "Provincial Government" were substituted for the words "Local Government" by paragraph 4(I) of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was subsequently substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

²The words "by the Provincial Government" were substituted for the words "by Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

of 1819.]

(Sections 15—19.)

shall receive authority from ¹[the State Government] for that purpose.

15. When the party whose lands it may be proposed to assess shall appear in conformity with the notice or summons, and shall deliver up his title-deeds, the Collector shall give a receipt for them, and, after duly examining them, shall deliver to the party a statement of the grounds on which his land may appear liable to assessment, with copies, on plain paper, of all documents on which his opinion may be founded.

Procedure when parties attend and produce title-deeds.

The Collector shall then desire the party to deliver a written answer within seven days.

16. It shall be the duty of the Collector or other officer exercising the powers of Collector carefully to number, mark, date and sign all documents produced by a zamindar or other person in possession of the lands proposed to be assessed in support of his claim to hold them free of assessment, or as parcel of an estate for which a permanent settlement shall have been concluded, and to insert in his proceedings the title and number of such documents, so that no doubt may exist in regard to their having been exhibited before him ;

Procedure in respect of documents produced.

and the Collector shall, before proceeding to judgment, warn the party that no accounts or other documentary evidence of any kind which he shall not produce before him, and for not producing which he may not assign good and sufficient cause, will be received at any future period, either by the Revenue or Judicial Authorities, and shall record his having done so on the face of his proceedings.

17. On receiving the answer of the party the Collector shall summon any witnesses he may deem necessary to support the claim of Government, with any which the party may desire to have summoned on his behalf, and shall take their depositions in judicial form, and in the presence of the party or his authorized agent.

Witnesses for and against claim of Government to be examined.

18. The Collector shall carefully examine all documents that may be produced by the party, and shall likewise give the party access to inspect all documents on which he may rely in proof of the liability of the land to assessment.

Examination of documents.

19. First.—The Collectors and other officers exercising the powers of Collectors are hereby authorized to summon witnesses and administer oaths, or cause the execution of solemn declaration in lieu thereof, in all cases brought before them under this Regulation * * * * *

Collector's authority to summon witnesses and administer oath.

Second. [*Penalties for perjury applicable to witnesses who affirm.*—*Rep. by the Repealing Act, 1873 (XII of 1873.)*]

Third. [*Penalties for resistance of process.*—*Rep. by the Repealing Act, 1876 (XII of 1876.)*]

¹The words "the Provincial Government" were substituted for the word "Government" by para. 3 and Schedule XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

¹Portion repealed by the Repealing Act, 1874 (XVI of 1874), is omitted.

(Sections 20—22.)

Procedure
on com-
pletion of
inquiry.

20. Having closed his proceedings, the Collector shall record his opinion in a ¹* * *rubakari* detailing the grounds on which it is founded, and whether the lands appear liable to assessment or otherwise and shall forward his proceedings to the Board of Revenue or other authority exercising the powers of that Board, in such mode as may be directed by that authority, furnishing the party at the same time with a copy on plain paper of the final *rubakari* aforesaid, and reporting his having done so to the Board or other authority as aforesaid.

Procedure
of Board
on receipt
of
Collector's
proceed-
ings.

21. *First.*—The Board of Revenue or other authority aforesaid, after calling for any further evidence which, on a consideration of the Collector's proceedings, they may deem wanting, shall, on a day to be fixed by a public notice affixed in the office, not being less than six weeks from the date on which the Collector may have furnished the party with a copy of his final *rubakari*, and after hearing anything which the party, if in attendance, may wish to urge in his own behalf, proceed to pass judgment in the case, and shall record their opinion in a ¹* * *rubakari*, delivering a copy thereof to the party on his requisition to that effect.

Final
rubakaris.

Second.—The final *rubakaris* which the Collectors and the ²[Board] are by the provisions of this section directed to record shall contain a distinct statement of the subject-matter of the case, the grounds on which the decision may be given, the names of the witnesses whose depositions may have been taken and the title of every exhibit read.

In what
cases
decision of
Board
final.

Third.—If the Board of Revenue or other authority aforesaid pronounce against the assessment, the proceedings shall be considered final, except on proof in a Court of Judicature of fraud or collusion in the previous inquiry.

If land
declared
liable to
assessment,
Collector
to fix
assessment.

Fourth.—In the event of the Board's declaring the lands liable to assessment, the Collector shall inform the party or his *vakil* of the decision of the Board and shall proceed to ascertain the limits of the land, and shall fix an assessment on the principles of the General Regulations on such information as may be procurable.

When
party may
be left in
possession
of land.

22. *First.*—If the party shall, within a fortnight of his receiving intimation of the Board's decision, tender to the Collector responsible security for the payment from that date of the *jama* which may eventually be fixed on the land, with interest at the rate of twelve *per cent.*, and shall engage to institute a suit in the Court in which the case may be cognizable within ten days,

¹The word "Persian," which was repealed by the Repealing Act, 1874 (XVI of 1874), is omitted.

²This word was substituted for the word "Boards" by the Amending Act, 1903 (I of 1903).

of 1819.]

(Sections 23, 24.)

commencing from the date of the deed of security, or (if the Court shall be shut, and shall not be opened until after the expiration of such ten days) within three days, calculating from the day on which it may be opened, to try the justness of the demand, the Collector shall leave the party in possession as before, reporting the circumstance for the information of the Board :

Provided, however; that in such cases the party shall produce all his accounts of collections for the information of the Collector in estimating the amount of the security to be required.

Proviso.

Second.—If the party be willing to give security for a portion only of the *jama* eventually assessable on the land, it shall be competent to him to do so on the conditions above specified.

Procedure of Collector if party do not furnish full security.

In this case the Collector shall, under the orders of the Board either hold the lands *khas* or farm them for such period as the Board may direct, and shall pay to the party a portion of the collections proportionate to the amount for which he may be willing and able to give responsible security.

Third.—It shall be competent to the Court to direct the Collector to take the security offered by the party, if he shall refuse to do so, and the Court shall be satisfied that it is sufficient ; but it shall rest with the Collector, subject to the directions of the Board, to fix the amount for which the surety is to be held bound.

Court may determine on sufficiency of security tendered.

Fourth.—The amount shall not, in the first instance, exceed the estimated annual revenue assessable on the lands, or the amount receivable by the party in one year, with interest ; but if, at the expiration of one year from the date on which the party may receive intimation of the Board's decision, the suit shall still be pending, it shall be competent to the Collector to require additional security for the same amount.

Amount of security how regulated.

Fifth.—In *mukarraris* the parties giving security, and intending to sue, shall continue to pay the *mukarrari jama*, and will be required to give security for the remaining revenue which may be eventually demandable from them.

Security in case of *mukarraris*.

23. If the party do not give security, or, having given security, neglect to sue, the Collector shall proceed to the final assessment of the land.

Final assessment.

24. *First.*—Persons whose lands may be assessed, either in failure to give security or to institute a suit within the prescribed time, shall nevertheless be entitled to sue any time within one year from the date of their being informed of the Board's decision ; but after the above period shall have elapsed the decision of the Board shall be final and conclusive :

Limitation of suits in Civil Courts.

Provided, however, that in cases in which the party may be able to show good and sufficient cause for not having sued within

Proviso.

(Sections 25—28.)

the said period, such as minority or absence, no limitation as to time shall prevail other than that generally prescribed by the existing Regulations in regard to private claims.

Second.—[*Further proviso.*]*—Rep. by the Repealing Act, 1874 (XVI of 1874).*

25. [Courts in which suits under this Regulation are to be instituted.]*—Rep. by the Repealing Act, 1874 (XVI of 1874).*

¹26. *First.*—In cases instituted in the Zila Court ²* * *, an appeal shall be received by the Court of Sadar Diwani Adalat²* * *

Second.—³* * * The Sadar Diwani Adalat ³* * * in all cases of ³* * * appeal being preferred in conformity with the provisions of this Regulation, shall, together with the decree against which such appeal may be lodged, likewise peruse the final *rubakari* filed in the case by the Board of Revenue or other authority exercising the powers of that Board; and, if on a consideration of those documents the decision of the Court should appear unjust or erroneous or doubtful, or its proceedings in the case manifestly irregular or imperfect, or if, from the nature of the cause, as stated in the decree or otherwise, it shall appear to them of sufficient importance to merit a further investigation in appeal, they shall admit ⁴[an appeal].

27. [*Stamped paper and fees.*]*—Rep. by the Repealing Act, 1874 (XVI of 1874).*

28. *First.*—On the production of any written document purporting to be a *farman* of any King of Delhi, or to be a *sanad*, *parwana* or other grant of any Wazir, or of any Nawab, Raja or other potentate or person formerly exercising authority in any part of ⁵[the territories of India], it shall be the duty of the Revenue and Judicial Authorities before whom such document may be produced to ascertain the validity and authenticity of it, by reference to such offices and records, and by the examination of such living witnesses, as may be likely to lead to the due appreciation thereof; and the said authorities shall not receive such document in evidence merely on the credit of the seal, or other attestations impressed upon it, without some external evidence in corroboration of its authenticity.

Appeal
from
Zila to
Sadar
Court.
Procedure
on such
appeals.

Validity of
farmans,
sanads or
grants to
be care-
fully
ascertained.

¹Section 26 is modified by the Bengal Revenue-free Lands Regulation, 1825 (XIV of 1825), s. 6, and is saved by the Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1828 (III of 1828), sec. 10(4).

²Words repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

³Words repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

⁴The original words were "a special appeal." The word "special" was repealed by the Repealing Act, 1874 (XVI of 1874), and the words "an appeal" were substituted by the Amending Act, 1891 (XII of 1891).

⁵Substituted for the words "the Provinces and territories now subject to the British Government" by para. 3 and the Sixth Schedule of the Adaptation of Laws Order, 1950.

The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819. 175
of 1819.]

(Sections 29—31.)

Second.—Provided also that no document of the above description which may be produced to any Court or Adalat shall be received, nor any proceedings held thereon, nor any faith given thereto, unless it shall be proved that the said document has been duly registered under the rules and requisitions of Regulations XIX¹ and XXXVII², 1793, ³[XLI and XLII, 1795] VIII, 1800⁴, [XXXI and XXXVI, 1803⁵, and VII, 1806⁵]; or unless due cause be shown for the non-registry.

Such deeds not to be received unless registered.

29. [Regulation applied to cases in which Collector suspects validity of original tenures of land, subsequently commuted for money-pensions.]—Rep. by the Amending Act, 1891 (XII of 1891).

30. [Trial by Collectors of resumption and other suits.]—Rep. by the Bengal Land-revenue Resumption Act, 1862 (Ben. Act VII of 1862).

31. **First.**—Nothing in the present Regulation shall be considered to affect the right of the proprietors of estates for which a permanent settlement has been concluded to the full benefit of all waste-lands included within the ascertained boundaries of such estates respectively at the period of the decennial settlement, and which have since been or may hereafter be reduced to cultivation. The exclusive advantages resulting from the improvement of all such lands were guaranteed to the proprietors by the conditions of that settlement, and it being left to the Courts of Judicature to decide on all contested cases whether lands assessed under the provisions of this Regulation were included at the period of the decennial settlement within the limits of estates for which a settlement has been concluded in perpetuity, and to reverse the decision of the Revenue-authorities in any case in which it shall appear that lands which actually formed, at the period in question, a component part of such an estate, have been unjustly subjected to assessment under the provisions of this Regulation, the zamindars and other proprietors of land will be enabled, by an application to the Courts, to obtain immediate redress in any case in which the Revenue-authorities shall violate or encroach on the rights secured to them by the permanent settlement.

Regulation not to affect right of proprietors to waste-land guaranteed at permanent settlement.

¹The Bengal Revenue-free Lands (Non-Badshahi Grants) Regulation, 1793.

²The Bengal Revenue-free Land (Badshahi Grants) Regulation, 1793.

³Ben. Regs. XLI and XLII of 1795 and XXXI and XXXVI of 1803, were repealed (except in certain areas) by the N.-W. Provinces Land-revenue Act, 1873 (XIX of 1873).

⁴The Bengal Revenue-free Lands Regulation, 1800.

⁵Ben. Reg. VII of 1808 was repealed by Act XXIX of 1871.

[Ben. Reg. II of 1819.]

(Section 31.)

Nor to
warrant
claim to
additional
revenue
from lands
perma-
nently
assessed
on plea of
error or
fraud.
Exception.

Second.—It is further hereby declared and enacted that all claims by the Revenue-authorities on behalf of ¹[the Govern-ment] to additional revenue from lands which were at the period of the decennial settlement included within the limits of estates for which a permanent settlement has been concluded, whether on the plea of error or fraud, or on any pretext whatever, saving, of course, the case of lands expressly excluded from the operation of the settlement, such as *lakhiraj* and *thanadari* lands, shall be and be considered wholly illegal and invalid.

¹The words "the Crown" were substituted for the word "Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

Bengal Regulation VIII of 1819

(The Bengal Patni Taluks Regulation, 1819.)¹

SUPPLEMENTED	{ Ben. Reg. I of 1820. { Act XXV of 1850. { Act VI of 1853. { Ben. Act VIII of 1865. { Ben. Act VIII of 1869.
SHORT TITLE GIVEN	Act V of 1897.
REPEALED IN PART	{ Act XXV of 1850. { Act X of 1859. { Act XVI of 1874. { Act XII of 1891. { Ben. Act VIII of 1865.
AMENDED	{ Ben. Act VIII of 1865. { Ben. Act IV of 1933. { Ben. Act XVII of 1936. { Ben. Act X of 1941.
REPEALED IN PART AND AMENDED	{ Act I of 1903. { Ben. Act XV of 1940.
ADAPTED	(a) The Government of India (Adaptation of Indian Laws) Order, 1937. (b) The Adaptation of Laws Order, 1950.

(3rd September 1819.)

*A Regulation to declare the validity of certain tenures, and to define the relative rights of zamindars and patni talukdars; also to establish a process for the sale of such taluks in satisfaction of the zamindar's demand of rent² * * *.*

1. By the rules of the perpetual settlement proprietors of estates paying revenue to Government, that is, the individuals answerable to Government for the revenue then assessed on the different *mahals*, were declared to be entitled to make any arrangements for the leasing of their lands in *taluk* or otherwise, that they might deem most conducive to their interests. Preamble.

By the rules of Regulation XLIV, 1793³, however, all such arrangements were subjected to two limitations ; first, that the *jama* or rent should not be fixed for a period exceeding ten years ; and, secondly, that in case of a sale for Government arrears, such leases or arrangements should stand cancelled from the day of sale.

¹SHORT TITLE.—This short title was given by the Amending Act, 1879 (V of 1897).

LOCAL EXTENT.—This Regulation extends to the whole of the former Province of Bengal—see the concluding paragraph of sec. 1.

²Words repealed by the Amending Act, 1897 (XII of 1891), are omitted.

³Reg. XLIV of 1793 was repealed by Act XXIX of 1871.

(Section 1.)

The provisions of section 2, Regulation XLIV, 1793¹, by which the period of all fixed engagements for rent was limited to ten years, have been rescinded by section 2, Regulation V, 1812², and in Regulation XVIII³ of the same year, it is more distinctly declared that *zamindars* are at liberty to grant *taluks* or other leases of their lands, fixing the rent in perpetuity at their discretion, subject, however, to the liability of being dissolved on sale of the grantor's estate for arrears of the Government revenue in the same manner as heretofore.

In practice, the grant of *taluks* and other leases at a rent fixed in perpetuity had been common with the *zamindars* of Bengal for some time before the passing of the two Regulations last mentioned, but, notwithstanding the abrogation of the rule which declared such arrangements null and void, and the abandonment of all intention or desire to have it enforced as a security to the Government revenue in the manner originally contemplated, it was omitted to declare in the rules of Regulations V and XVIII³ of 1812, or in any other Regulations, whether tenures at the time in existence and held under covenants or engagements entered into by the parties in violation of the rule of section 2, Regulation XLIV, 1793¹, should, if called in question, be deemed invalid and void as heretofore.

The point it has been deemed necessary to set at rest by a general declaration of the validity of any tenures that may be now in existence, notwithstanding that they may have been granted at a rent fixed in perpetuity, or for a longer term than ten years, while the rule fixing this limitation to the term of all such engagements, and declaring null and void any granted in contravention thereto, was in force.

Furthermore, in the exercise of the privilege thus conceded to *zamindars* under direct engagements with Government, there has been created a tenure which had its origin on the estates of the *Raja* of Burdwan, but has since been extended to other *zamindars*; the character of which tenure is that it is a *taluk* created by the *zamindar*, to be held at a rent fixed in perpetuity by the lessee and his heirs for ever; the tenant is called upon to furnish collateral security for the rent, and for his conduct generally, or he is excused from this obligation at the *zamindar's* discretion; but even if the original tenant be excused, still, in case of sale for arrears, or other operation leading to the introduction of another tenant, such new incumbent has always in practice been liable to be so called upon at the option of the *zamindar*.

By the terms also of the engagements interchanged, it is amongst other stipulations provided that, in case of an arrear occurring, the tenure may be brought to sale by the *zamindar*,

¹Ben. Reg. XLIV of 1793 was repealed by Act XXIX of 1871.

²The Bengal Land-revenue Sales Regulation, 1812.

³The Bengal Leases and Land-revenue Regulation, 1812.

of 1819.]

(Section 1.)

and, if the sale do not yield a sufficient amount to make good the balance of rent at the time due, the remaining property of the defaulter shall be further answerable for the demand.

These tenures have usually been denominated *patni taluks*, and it has been a common practice of the holders of them to underlet on precisely similar terms to other persons, who on taking such leases went by the name of *darpatni talukdars*: these again sometimes similarly underlet to *sepatnidars*; and the conditions of all the title-deeds vary in nothing material from the original engagements executed by the first holder.

In these engagements, however, it is not stipulated whether the sale thus reserved to himself by the grantor is for his own benefit, or for that of the tenant; that is, whether, in case the proceeds of sale should exceed the *zamindar's* demand of rent, the tenant would be entitled to such excess; neither is the manner of sale specified, nor do the usages of the country nor the Regulations of Government afford any distinct rules by the application of which to the specific cases the defects above alluded to could be supplied or the points of doubt and difficulty involved in the omission be brought to determination in a consistent and uniform manner.

The tenures in question have extended through several *zilas* of Bengal, and the mischiefs which have arisen from the want of a consistent rule of action for the guidance of the Courts of Civil Judicature in regard to them have been productive of such confusion as to demand the interference of the legislature: it has accordingly been deemed necessary to regulate and define the nature of property given and acquired on the creation of a *patni taluk* as above described, also to declare the legality of the practice of underletting in the manner in which it has been exercised by *patnidars* and others, establishing at the same time such provisions as have appeared calculated to protect the underlessee from any collusion of his immediate superior with the *zamindar* or other, for his ruin, as well as to secure the just rights of the *zamindar* on the sale of any tenure under the stipulations of the original engagements entered into with him.

It has further been deemed indispensable to fix the process by which the said tenures are to be brought to sale, and the form and manner of conducting such sale; and

whereas the estates of *zamindars* under engagements with Government are liable to be brought to sale at any time for an arrear in the revenue payable by monthly *kists* to Government, it has seemed just to allow any *zamindar* who may have granted tenure with a stipulation of the right to sell for arrears, the opportunity of availing himself of this means of realizing his dues in the middle of the year, as well as at the close, instead of only at the

[Ben. Reg VIII.

(Section 2.)

end of the Bengal year,¹ as heretofore allowed by the Regulations in force ; it has further been deemed equitable to extend this rule to all cases in which the right of sale may have been reserved, even though, in conformity with the Regulations heretofore in force, the stipulation for sale contained in the engagements interchanged may have restricted such sale to the case of a demand for rent remaining unpaid at the close of the Bengal year.¹

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The following rules have accordingly been enacted by His Excellency the Most Noble the Governor General in Council, to take effect from the date of their promulgation throughout the several districts of the Province of Bengal, including Midnapore.

Leases
fixing rent
in perpetuity or
for
more than
ten years,
valid,
though
executed
while
section 2,
Regulation
XLIV,
1793, was
in force.

2. It is hereby declared that any leases or engagements for the fixing of rent now in existence that may have been granted or concluded for a term of years or in perpetuity by a proprietor under engagements with ³[the Government], or other person competent to grant the same, shall be deemed good and valid tenures, according to the terms of the covenants or engagements interchanged notwithstanding that the same may have been executed before the passing of Regulation V, 1812,⁴ and while the rule of section 2, Regulation XLIV, 1793,⁵ which limited the period for which it was lawful to grant such engagements to ten years, and declared all that might be entered into for a longer term to be null and void, was in full force and effect ; and notwithstanding that the stipulations of the said leases may be in violation of the rule in question :

Provided, however, that nothing herein contained shall be held to exempt any tenures held under engagements from proprietors of estates paying revenue to ³[the Government] from the liability to be cancelled on sale of the said estates for arrears of the said revenue, ⁶* * * unless especially exempted from such liability by the rule in question, or by any other specific rule of the Regulations in force.

¹i.e., the month of *Chaitra*, which corresponds with the last part of March and the first part of April.

²The words "It has been likewise deemed advisable to explain and modify some of the existing rules for the collection of rents, with a view to render them more efficacious than at present, as well as to provide against sundry means of evasion now resorted to by defaulters," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

³The words "the Crown" were substituted for the word "Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "Government" was subsequently substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁴The Bengal Land-revenue Sales Regulation, 1812.

⁵Ben. Reg. XLIV of 1793 was repealed by Act XXIX of 1871.

⁶The words and figures "under the rule of section 5, Regulation XLIV of 1793..." which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

of 1819.]

(Section 3.)

3. *First.*—The tenures known by the name of *patni taluks*, as described in the preamble to this Regulation, shall be deemed to be valid tenures in perpetuity, according to the terms of the engagements under which they are held. They are heritable by their conditions; and it is hereby further declared that they are capable of being transferred by sale, gift or otherwise, at the discretion of the holder, as well as answerable for his personal debts, and subject to the process of the Courts of Judicature, in the same manner as other real property.

Patni tenures declared valid transferable and answerable for debt.

Second.—*Patni talukdars* are hereby declared to possess the right of letting out the lands composing their *taluks* in any manner they may deem most conducive to their interest; and any engagements so entered into by such *talukdars* with others shall be legal and binding between the parties to the same, their heirs and assignees:

Patnidar's right of under-letting.

Provided, however, that no such engagements shall operate to the prejudice of the right of the *zumindar* to hold the superior tenure answerable for any arrear of his rent, in the estate in which he granted it, and free of all incumbrance resulting from the act of his tenant.

Third.—In case of an arrear occurring upon any tenure of the description alluded to in the first clause of this section, it shall not be liable to be cancelled for the same; ¹* but the tenure shall be brought to sale by public auction, and the holder of the tenure will be entitled to any excess in the proceeds of such sale beyond the amount of the arrear of rent due, subject, however, to the provisions contained in section 17 of this Regulation.

Patni tenure not voidable for arrears.

²[*Fourth.*—Subject to the provision of section 14A of this Regulation, an arrear of rent shall, notwithstanding anything contained in any other section of this Regulation or in any engagement between the *zamindar* and the *talukdar* whether entered into, before or after the commencement of the Bengal Patni Taluks Regulation (Amendment) Act, 1941, bear simple interest at the rate of six and a quarter *per centum per annum* from the expiration of that quarter of the agricultural year in which the instalment falls due to the date of payment or of sale of the tenure under this Regulation or of the institution of a suit for arrears of rent, whichever is earlier.

Explanation.—The term 'agricultural year' has the same meaning as in clause (1) of section 3 of the Bengal Tenancy Act, 1885.]

Ben. Act
X of 1941.

VIII of
1885.

¹The words and figures "under the rule contained in the seventh clause of section 15, Regulation 7, 1799, for leases conveying a limited interest in the land," were repealed by the Repealing Act, 1874 (XVI of 1874).

²Added by section 2 of the Bengal Patni Taluks Regulation (Amendment) Act, 1941 (Ben. X of 1941).

[Ben. Reg. VIII]

(Sections 4, 5.)

Inferior
tenures
under
similar
title-
deeds
confer
similar
interest
to that
provided
for *patni*
taluks
in section
3.

Zamindar
not to
refuse to
give effect
to
transfer;

but may
demand
fee,

and
security.

4. If the holder of a *patni taluk* shall have underlet in such manner as to have conveyed a similar interest to that enjoyed by himself, as explained in the preamble to this Regulation, the holder of such a tenure shall be deemed to have acquired all the rights and immunities declared in the preceding section to attach to *patni taluks*, in so far as concerns the grantor of such undertenure.

The same construction shall also hold in the case of *patni taluks* of the third or fourth degree.

5. The right of alienation having been declared to vest in the holder of a *patni taluk*, it shall not be competent to the *zamindar* or other superior to refuse to register, and otherwise to give effect to such alienations, by discharging the party transferring his interest from personal responsibility, and by accepting the engagements of the transferee.

In conformity, however, with established usage, the *zamindar* or other superior shall be entitled to exact a fee upon every such alienation; and the rate of the said fee is hereby fixed at two per cent, on the *jama* or annual rent of the interest transferred, until the same shall amount to one hundred rupees which sum shall be the maximum of any fee to be exacted on this account.

The *zamindar* shall also be entitled to demand substantial security from the transferee or purchaser, to the amount of half the *jama* or yearly rent payable to him from the tenure transferred; the condition of furnishing such security on requisition being understood to be one of the original liabilities of the tenure.

The above rules shall apply equally to the case of a sale made in execution of a decree or Judgment of Court, as to all other alienations, but it shall not apply to the case of sale for an arrear in the rent due to the *zamindar* or other superior, under the rules hereinafter contained.

The purchaser at such a sale shall be entitled to have his name registered and to obtain possession without fee, though of course liable to be called on to give security under the conditions of the tenure purchased.

¹ Provided that, notwithstanding anything contained in this Regulation, the provisions relating to security shall not, after the commencement of the the Bengal Patni Taluks Regulation (Amendment) Act, 1940, apply to the transfer of a *patni taluk* or a share or a portion thereof.

Ben. Act
XV of
1940.

¹ This proviso was inserted by section 2 of the Bengal Patni Taluks Regulation (Amendment) Act, 1940 (Ben. Act XV of 1940).

of 1819.]

(Sections 6, 6A.)

6. It shall be competent to the *zamindar* or other superior to refuse the registry of any transfer until the fee above stipulated be paid, and until substantial security to the amount specified be tendered and accepted :

Zamindar
may
refuse
sanction to
transfer
till fee and
security
tendered.

Provided, however, that if the security tendered by any purchaser or transferee should not be approved by the *zamindar*, and the party tendering it shall be dissatisfied with such rejection, he shall be competent to appeal therefrom by petition or common motion in the Civil Court of the district, which authority, if satisfied of the sufficiency of the security tendered, shall issue an injunction on the *zamindar* to accept it and give effect to the transfer without delay.

¹[It is hereby provided that the rules of section 5 relating to fee for alienation shall be held to apply to transfers of any fractional portion of or the entire interest in, a *patni taluk*.]

²6A. (1) If a person who holds a share or a portion of a *patni taluk* desires to pay his share of the rent to the *zamindar* separately he may submit to the Collector a written application to that effect containing such particulars as may be prescribed by rules made by the ³[State] Government in this behalf.

Separate
accounts.

The Collector shall then cause a copy of such application to be served or published in such manner as may be prescribed by rules made by the ³[State] Government.

(2) In the event of no objection being received by the Collector from any co-sharer of the applicant or from the *zamindar* or any of his co-sharers within six weeks from the time of service or publication of the copy of application under sub-section (1) whichever is later, the Collector shall direct the *zamindar* or *zamindars* to open a separate account in the name of the applicant to which all payments made by him shall be credited separately to his share. The date on which the Collector directs the opening of a separate account shall be held to be that from which the separate liabilities of the share of the applicant commence.

(3) If any of the co-sharers of the applicant or the *zamindar* or any of his co-sharers object that the applicant has no right to the share claimed by him, or that his interest in the *patni taluk* is less or other than that claimed by him, or if the application be in respect of a specific portion of the land of a *taluk*, that the amount of rent stated by the applicant to have been heretofore paid on account of such portion of land is not the amount which has been recognized by the other sharers as the rent thereof, the Collector shall refer the parties to the civil court and shall suspend proceedings until the question at issue is judicially determined.

¹Substituted by section 3 of the Bengal Patni Taluks Regulation (Amendment) Act, 1940 (Ben. Act XV of 1940) for the last paragraph.

²Section 6A was inserted by section 4 of the Bengal Patni Taluks Regulation (Amendment) Act, 1940 (Ben. Act XV of 1940).

³Substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

[Ben. Reg. VIII

(Section 6A.)

(4) (a) Whenever a separate account shall have been ordered to be opened in respect of a share or a portion of a *patni taluk* under sub-section (2), or

(b) whenever a *patni taluk* shall have been divided or the rent payable in respect thereof shall have been distributed under section 6B,

if the *taluk* shall become liable for sale for arrears of rent, only that share or portion of such *taluk* shall be put up for sale in respect of which the arrear of rent may be due.

(5) In the advertisement of sale, notice of intention to exclude the share or portion of the *patni taluk* from which no arrear of rent is due shall be given. The share or portion of the *taluk* sold, together with the share or portion excluded from the sale, shall continue to constitute one integral *taluk*, the share or portion sold being charged with the separate portion of the rent assigned thereto.

(6) If in the case of a sale according to sub-section (5) the highest offer for the share or portion offered for sale is not equal to the amount of arrears of rent for which it was advertised for sale and the subsequent arrears of rent due thereon up to the date of sale, the sale shall be stopped and a notice that the entire *patni taluk* shall be put up for sale for such arrears shall be sent to all co-sharers of the tenant in such manner as may be prescribed by rules to be made by the ¹[State] Government.

On the twenty-first day from the service of notice on the co-sharers of the tenant, the entire *patni taluk* shall be put up for sale for the arrears, unless any other co-sharer of the tenant shall, within fifteen days, have purchased the share or portion in arrear by paying the whole of the arrears of rent for which it was advertised for sale and the subsequent arrears of rent due thereon or the tenant pays up the whole of such arrears within the said fifteen days :

Provided that, if a *zamindar* omits to avail himself of the means provided by this Regulation for realisation of any arrears of rent due in respect of a share or a portion of a *patni taluk*, he shall not be entitled to put up for sale under this Regulation the entire *patni taluk* for recovery of such arrears.

(7) If such purchase is completed, the officer making the sale shall give a certificate of sale and delivery of possession, and if no such purchase is made within fifteen days, the entire *taluk* shall be sold in the manner referred to in section 14 of the Bengal Land-revenue Sales Act, 1859.

of 1819.]

(Sections 6B—8.)

¹6B. Notwithstanding anything contained in any other Act—

Distribu-
tion of rent
or parti-
tion of
patni
taluk.

VIII of
1885.

(a) The provisions of section 88 of the Bengal Tenancy Act, 1885, shall apply *mutatis mutandis*, to the distribution of rent payable in respect of a *patni taluk* with the substitution of the words "fifty rupees" for the words "two rupees" in the proviso (b) to sub-section (2) of the said section ;

en. Act
of 1897.

(b) it shall be optional for every co-sharer proprietor of a joint undivided *patni taluk* either to institute a suit in a competent civil court for partition of such *taluk* or to partition such *taluk* according to the provisions of the Estates Partition Act, 1897, which Act shall apply *mutatis mutandis* to such partition.

7. [Upon public sale, if security not tendered within one month, zamindar may attach.]—*Rep. by section 5 of the Bengal Patni Taluks Regulation (Amendment) Act, 1940 (Ben. Act XV of 1940).*

8. First.—Zamindars, that is, proprietors under direct engagements with the ²[Government], shall be entitled to apply in the manner following for periodical sales of any tenures upon which the right of selling or bringing to sale for an arrear of rent may have been specially reserved by stipulation in the engagements interchanged on the creation of the tenure.

Zamindars
allowed
sales of
tenures,
in which
right to
sell for
arrears is
reserved.

The exercise of this power shall not be confined to cases in which the stipulation for sale may have been unrestricted in regard to time, but shall apply equally to tenures held under engagements stipulating merely for a sale at the end of the year, in conformity with the practice heretofore allowed by the Regulations in force.

Second.—On the first day of *Baisakh*,³ that is, at the commencement of the following year from that of which the rent is due, the *zamindar* shall present a petition ⁴* * * to the Collector, containing a specification of any balances that may be due to him on account of the expired year, from all or any *talukdars* or other holders of an interest of the nature described in the preceding clause of this section.

First sale
to be
applied for
on first of
Baisakh.

The same shall then be stuck up in some conspicuous part of the *cutcherry* with a notice that, if the amount claimed be not paid before the first of *Jeth*⁵ following, the tenures of the defaulters will on that day be sold by public sale in liquidation.

¹Section 6B was inserted by section 4 of the Bengal Patni Taluks Regulation (Amendment) Act, 1940 (Ben. Act XV of 1940).

²The word "Crown" was substituted for the word "Government" by para. 3 and Schedule XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and this word was subsequently substituted for the word "Crown" by paragraph 4(A) of the Adaptation of Laws Order, 1950.

³The month of *Baisakh* corresponds with the last part of April and the first part of May.

⁴The words "to the Civil Court of the district, and a similar one," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

⁵The month *Jeth* corresponds with the last part of May and the first part of June.

(Section 8.)

Should, however, the first of Jeth¹ fall on a Sunday or holiday, the next subsequent day, not a holiday, shall be selected instead ; a similar notice shall be stuck up at the *sadar cutcherry* of the *zamindar* himself, and a copy or extract of such part of the notice as may apply to the individual case shall be by him sent to be similarly published at the *cutcherry* or at the principal town or village upon the land of the defaulter.

The *zamindar* shall be exclusively answerable for the observance of the forms above prescribed, and the notice required to be sent into the *mufassal* shall be served by a single peon, who shall bring back the receipt of the defaulter, or of his manager for the same, or, in the event of inability to procure this, the signatures of three substantial persons residing in the neighbourhood, in attestation of the notice having been brought and published on the spot.

If it shall appear from the tenor of the receipt or attestation in question that the notice has been published at any time, previous to the fifteenth of the month of *Baisakh*² it shall be sufficient warrant for the sale to proceed upon the day appointed.

In case the people of the village should object or refuse to sign their names in attestation, the peon shall go to the *cutcherry* of the nearest *munsif*, or if there should be no *munsif*, to the nearest *thana*, and there make voluntary oath of the same having been duly published ; certificate to which effect shall be signed and sealed by the said officers and delivered to the peon.

³[The *zamindar* shall also send by registered post to all defaulters a copy of, or an extract from, the notice containing a specification of any balances that may be due to him on account of the rent of the expired year and other particulars mentioned in this section.]

Third.—On the first day of *Kartik*,⁴ in the middle of the year, the *zamindar* shall be at liberty to present a similar petition, with a statement of any balances that may be due on account of the rent of the current year, up to the end of the month of *Aswin*,⁵ and to cause similar publication to be made of a sale of the tenures of defaulters, to take place on the first of *Aghan*,⁶ unless the whole of the advertised balance shall be paid before the date in question, or so much of it as shall reduce the arrear, including any intermediate demand for the month of *Kartik*,⁴ to less than one-fourth or a four-anna

Mid-year
sale to be
applied
for on
first of
Kartik.

¹The month of *Jeth* corresponds with the last part of May and the first part of June.

²The month of *Baisakh* corresponds with the last part of April and the first part of May.

³Inserted by s. 6(a) of the Bengal Patni Taluks Regulation (Amendment) Act, 1940 (Ben. Act XV of 1940).

⁴The month of *Kartik* corresponds with the last part of October and the first part of November.

⁵The month of *Aswin* corresponds with the last part of September and the first part of October.

⁶The month of *Aghan* corresponds with the last part of November and the first part of December.

of 1819.]

(Section 9.)

proportion of the total demand of the *zamindâr*, according to the *kistbandi*, calculated from the commencement of the year to the last day of *Kartik*.¹

²[The *zamindar* shall send by registered post to all defaulters a copy of, or an extract from, the notice containing a specification of any balance that may be due to him on account of the rent of the current year up to the end of the month of *Aswin*, and other particulars mentioned in this section.]

³*Fourth.* Where the *zamindar* is satisfied that there is reason to believe that the defaulter is keeping out of the way for the purpose of avoiding service of a notice or document under this section or that for any other reason the notice or document cannot be served in the ordinary way, he may cause it to be served by affixing the same in some conspicuous part of the house (if any) in which the defaulter is known to have last resided or carried on business or personally worked for gain.

Service by the abovementioned method shall be as effectual as if it had been made on the defaulter personally.

⁴*Fifth.*—The name and address given in a notice of succession or transfer of a *patni taluk* or a share or a portion thereof under section 17A shall be presumed to be the correct name and address of the person succeeding to, or transferee of such *taluk* until fresh notice under that section has been given on a subsequent date or until a change of the address has been notified to the *zamindar* by registered post not later than 1st day of *Chaitra* or the 1st day of *Aswin* immediately preceding the date of sale fixed under this section.

9. All sales of saleable tenures applied for under the rules of this Regulation shall be made in public *cutcherry* * * * ; the land shall be sold to the highest bidder, and every one, not the actual defaulter, shall be free to bid, not excepting the person in satisfaction of whose demand the sale may be made, nor the undertenants of the defaulter ; fifteen *per cent.* of the purchase-money shall be paid immediately the lot is knocked down, and the officer conducting the sale shall be competent to refuse to accept a bid, or to knock down a lot to any bidder, unless he has assurance to his satisfaction that the amount required to be deposited is in hand for the purpose, or will be produced within two hours.

Sales how conducted.

If the fifteen *per cent.* be not paid in cash, or in ⁵[currency-notes], within two hours of the sale, or an equivalent amount in Government securities be not lodged, the lot shall be re-sold on the same day, and, if the remainder of the purchase-money

¹See foot-note 4 on page 186, *ante*.

²Added by section 6(b) of the Bengal Patni Taluks Regulation (Amendment) Act, 1940 (Ben. Act XV of 1940).

³Added by section 6(c), *ibid*.

⁴The words "by the Registrar or acting Registrar of the Civil Court, or, in his absence, by the person in charge of the office of Judge or of Magistrate of the district within which the lands may be situated," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

⁵These words were substituted for the words "notes of the Bank of Bengal" by the Amending Act, 1903 (I of 1903).

be not paid by noon of the eighth day notice shall be given of re-sale on the following day, that is, on the ninth from the first sale, by proclaiming the same by beat of drum through the bazar of the *sadar* station of the *zila*, after which the lot shall be re-sold at the appointed time at the risk of the first purchaser, who shall forfeit the advance of fifteen *per cent.* already made,^{1*} * and be further answerable for any sum in which the proceeds of the second sale may fall short of the antecedent one; such deficiency to be levied by the process for the execution of decrees of the Civil Courts.

Forms
to be
observed
in
selling.

10. At the time of the sale the notice previously stuck up in the *cutcherry* shall be taken down, and the lots be called up successively in the order in which they may be found in that notice.

A person shall attend on the part of the *zamindar*, with a particular statement of the payments made up to the day of sale, on account of the balance of each advertised lot, together with the receipt for, or certificate of, the notice directed to be published in the *mufassal*, nor shall any lot be put up to sale until the statement produced shall have been inspected, and the existence of a balance for the year ascertained therefrom, nor until the receipt for the notice shall have been read; the observance of which forms shall be recorded in a separate *rubakari* to be held upon each lot sold.

If the sale be of the description provided for in the third clause of section 8 of this Regulation, the *kistbandi* of the defaulter shall likewise be produced, in order that it may be seen that the balance remaining unpaid exceeds a four-anna proportion of the demand up to the date of sale; nor shall the sale take place unless this be ascertained.

The *zamindar* shall be exclusively responsible for the correctness and authenticity of the papers to be thus exhibited, nor shall the public officer making the sale be answerable in any respect, except for its fairness and publicity, and for the observance of the rules prescribed for his guidance in this Regulation.

Tenure
to be
sold
free of
incum-
brance
by act of
defaulter

11. *First.*—It is hereby declared that any *taluk* or saleable tenure that may be disposed of at a public sale, under the rules of this Regulation, for arrears of rent due on account of it, is sold free of all incumbrances that may have accrued upon it by act of the defaulting proprietor, his representatives or assignees, unless the right of making such incumbrances shall have been expressly vested in the holder by a stipulation to that effect in the written engagements under which the said *taluk* may have been held.

No transfer by sale, gift or otherwise, no mortgage or other limited assignment, shall be permitted to bar the indefeasible right of the *zamindar* to hold the tenure of his creation answerable, in the state in which he created it for the rent, which is in fact his reserved property in the tenure, except the transfer

¹The words "(which shall be in such case regarded as part of the proceeds of the sale)," which were repealed by the Forfeited Deposits Act, (XXV of 1850), are omitted.

of 1819.]

(Sections 12, 13.)

or assignment should have been made with a condition to that effect, under express authority obtained from such zamindar.

Second.—In like manner, on sale of a *taluk* for arrears, all leases originating with the holder of the former tenure, if creative of a middle interest between the resident cultivators and the late proprietor, must be considered to be cancelled except the authority to grant them should have been specially transferred; the possessors of such interests must consequently lose the right to hold possession of the land and to collect the rents of the *raiya*s; this having been enjoyed merely in consequence of the defaulter's assignment of a certain portion of his own interest, the whole of which was liable for the rent.

No under-lease to stand after sale.

Third.—Provided, nevertheless, that nothing herein contained shall be construed to entitle the purchaser of a *taluk* or other saleable tenure intermediated between the *zamindar* and actual cultivators to eject a *khudkast raiyat* or resident and hereditary cultivator, nor to cancel *bona fide* engagements made with such tenants by the late incumbent or his representative, except it be proved in regular suit, to be brought by such purchaser for the adjustment of his rent, that a higher rate would have been demandable at the time such engagements were contracted by his predecessor.

Exception in favour of *bona fide* engagements with *raiya*s.

12. The rules of the preceding section, being declaratory of the principle to be observed on all occasions wherein saleable tenures are made responsible for the *zamindar's* reserved rent, will equally apply to the case of *taluks*, heretofore sold, as to those that may be sold henceforward, if the sale shall have been fair, and the process observed in conducting it shall have been that recognised and in use in the district at the time of selling.

Above rule to take effect retrospectively.

Nothing, however, herein contained shall operate to the prejudice of any agreement, express or implied, now subsisting between the purchaser of a *taluk* and the lessees of his predecessor.

Proviso.

Neither shall the rule for the fall of under-tenures be considered to apply to any private transfer by a *talukdâr* of his own interest, nor to a public sale in execution of a decree, nor to the case of a relinquishment by the *talukdâr* in favour of the *zamindar*, nor to any act originating with the former holder, other than default as aforesaid: all such operations involve only a transfer of the tenure in the state in which it may be held at the time, and the new incumbent succeeds to no more than the reserved rights of the former tenant, such as they may be, and is of course subject to any restriction put upon the tenure by his act.

Rules not to apply to private transfers.

13. *First.*—With reference to the injury that may be brought upon the holder of a *taluk* of the second degree by the operation of the preceding rules, in case the proprietor of the superior tenure purposely withholds the rent due from himself to the *zamindar* after having realised his own dues from the inferior tenantry, it is deemed necessary to allow such *talukdârs* the means of saving their tenures from the ruin that must attend such a sale; and the following rules have accordingly been enacted for this purpose,

Reason for allowing under-tenants means of staying sale.

(Section 13.)

How
under-
tenants
may
stay
sale.

Second.—Whenever the tenure of a *talukdār* of the first degree may be advertised for sale in the manner required by the second and third clauses of section 8 of this Regulation, for arrears of rent due to the *zamindar*, the *talukdār*s of the second degree, or any number of them, shall be entitled to stay the final sale, by paying into Court the amount of balance that may be declared due by the person attending on the part of the *zamindar* on the day appointed for sale; in like manner they shall be entitled to lodge money antecedently, for the purpose of eventually answering any demand that may remain due on the day fixed for the sale, and, should the amount lodged be sufficient, the sale shall not proceed, but, after making good to the *zamindar* the amount of his demand, any excess shall be paid back to the person or persons who may have lodged it.

Procedure
in case of
amount
lodged
being
rent due
from
under-
tenant;

Third.—If the amount so lodged shall be rent due by the inferior *talukdār* to the holder of the advertised tenure, the same shall be stated at the time of making the deposit, and the amount shall be carried to the account of the tenant or tenants lodging it, and be deducted from any claim of rent that may at the time be pending, or be thereafter brought forward against him or them by the proprietor of the advertised tenure, on account of the year or months for which the notice of sale may have been published.

and in
case of
amount
lodged
being
advance
from
private
funds,

Fourth.—If the person or persons making such a deposit, in order to stay the sale of the superior tenure, shall have already paid the whole of the rent due from himself or themselves, so that the amount lodged is an advance from private funds, and not a disbursement on account of the said rent, such deposit shall not be carried to credit in, or set against, future demands for rent, but shall be considered as a loan made to the proprietor of the tenure preserved from sale by such means, and the *taluk* so preserved shall be the security to the person or persons making the advance, who shall be considered to have a lien thereupon, in the same manner as if the loan had been made upon mortgage; and he or they shall be entitled, on applying for the same, to obtain immediate possession of the tenure of the defaulter, in order to recover the amount so advanced from any profits belonging thereto.

If the defaulter shall desire to recover his tenure from the hands of the person or persons who, by making the advance may have acquired such an interest therein, and entered on possession in consequence, he shall not be entitled to do so, except upon repayment of the entire sum advanced, with interest at the rate of twelve *per cent. per annum* up to the date of possession having been given as above, or upon exhibiting proof, in a regular suit to be instituted for the purpose, that the full amount so advanced, with interest, has been realised from the usufruct of the tenure.

Fifth.—When any person whose interests are affected by the sale of a *patni taluk* or a share or a portion thereof adver-

¹Added by section 7 of the Bengal Patni Taluks Regulation (Amendment) Act, 1940 (Ben. Act XV of 1940).

of 1819.]

(Section 14.)

tised for sale under this Regulation pays to the Collector the amount requisite to prevent the sale—

- (a) the amount so paid by him shall be deemed to be a debt bearing interest at twelve *per centum per annum* and secured by a mortgage of the *taluk* or a share or a portion thereof to him ;
- (b) his mortgage shall take priority of every other charge on the *taluk* or a share or a portion thereof other than a charge for arrears of rent ; and
- (c) he shall be entitled to possession of the *taluk* or a share or a portion thereof as mortgagee of the *talukdār*, and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.

Nothing in this clause shall affect any other remedy to which any such person would be entitled.

¹*Sixth.*—When a *patni taluk* or a share or a portion thereof is advertised for sale under this Regulation, for arrears of rent owing to the default of a superior *talukdār*, and an inferior *talukdār* pays money to the Collector in order to prevent the sale such inferior *talukdār* may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord ; and that landlord, if he is not the defaulter may, in like manner, deduct the amount so deducted, from any rent payable by him to his immediate landlord and so on until the defaulter is reached.

14. *First.*—Should the balance claimed by a *zamindar* on account of the rent of any under-tenure remain unpaid upon the day fixed for the sale of the tenure, the sale shall be made without reserve, in the manner provided for in sections 9 and 10 of this Regulation ; nor shall it be stayed or postponed on any account, unless the amount of the demand be lodged.

It shall, however, be competent to any party desirous of contesting the right of the *zamindar* to make the sale, whether on the ground of there having been no balance due or on any other ground, to sue the *zamindar* for the reversal of the same, and, upon establishing a sufficient plea, to obtain a decree with full costs and damages.

Sale not to be stayed unless arrear claimed be lodged. But suit to lie for its reversal.

The purchaser shall be made a party in such suits, and, upon decree passing for reversal of the sale, the Court shall be careful to indemnify him against all loss, at the charge of the *zamindar* or person at whose suit the sale may have been made :

²[Provided that, notwithstanding anything contained in this Regulation the right of the *zamindar* to make the sale shall not be stopped by any party, nor shall the sale be reversed solely, on the ground that a notice or other document mentioned in section 8 was not served personally on the defaulters or any of them.]

¹Added by section 7 of the Bengal Patni Taluks Regulation (Amendment) Act, 1940 (Ben. Act XV of 1940).

²Added by section 8(a) of the Bengal Patni Taluks Regulation (Amendment) Act, 1940 (Ben. Act XV of 1940).

(Section 14A.)

Defaulter
may
apply
for
summary
investi-
gation.

Second.—In cases also in which a *talukdār* may contest the *zamindār's* demand of any arrear, as specified in the notice advertised, such *talukdār* shall be competent to apply for a summary investigation at any time within the period of notice ; the *zamindār* shall then be called upon to furnish his *kabuliyat* and other proofs at the shortest convenient notice, in order that the award may, if possible, be made before the day appointed for sale.

Sale
not to
be stayed
unless
amount
claimed
be
deposited.

Such award, if so made, will of course regulate the ulterior process ; but, if the case be still pending, the lot shall be called up in its turn, notwithstanding the suit ; and, if the *zamindār* or his agent in attendance insist on the demand, the sale shall be made on his responsibility, nor shall it be stayed, or the summary suit be allowed to proceed, unless the amount claimed be lodged in cash, or in Government securities, or in ¹[currency notes], by the *talukdār* contesting the demand ; and if such deposit be not made, the alleged defaulter will have no remedy but by a regular action for damages and for a reversal of the sale ²[unless he makes an application under section 14A].

³[*Third.*—Any *talukdar* shall be entitled to stay the sale of his *patni taluk* or of a share or a portion thereof before the sale of such *taluk*, share or portion actually takes place by paying to the officer conducting the sale the amount of arrears of rent for which it was advertised for sale.]

Procedure
for
setting
aside
sale.

⁴14A. *First.*—It shall be competent to a defaulting *patni-dar* of a *patni taluk* or a defaulting holder of a tenure sold under this Regulation or to a *talukdār* or tenure-holder of the second degree of such *taluk* or tenure or to a person holding an interest in such *taluk* or tenure in virtue of a title acquired before the sale of the *taluk* or tenure or to a person having a mortgage on such *taluk* or tenure to apply to the Collector to have the sale set aside on the applicant depositing with the Collector within thirty days from the date of sale, or, if the *taluk* or tenure has been resold, within thirty days from the date of the original sale—

(a) a sum of money equal to one *per cent.* of the purchase money, for payment to ⁵[the State Government] for the purposes specified in the second clause of section 17,

(b) a sum of money equal to the amount on account of which the sale has been made together with interest

¹These words were substituted for the words "notes of the Bank of Bengal" by the Amending Act, 1903 (1 of 1903).

²These words were added by section 2 of the Bengal Patni Taluks Regulation (Amendment) Act, 1933 (Ben. Act IV of 1933).

³Added by section 8(b) of the Bengal Patni Taluks Regulation (Amendment) Act, 1940 (Ben. Act XV of 1940).

⁴Section 14A was inserted by section 3 of the Bengal Patni Taluks Regulation (Amendment) Act, 1933 (Ben. Act IV of 1933).

⁵The words "the Provincial Government" were substituted for the word "Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was subsequently substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

(Section 14A.)

¹[up to the date of deposit] and all charges incurred in bringing the *taluk* or tenure to sale, for payment to the *zamindar*, and

- (c) a sum of money equal to five per cent. of the purchase money and in no case less than one rupee for payment to the purchaser.-

On receipt of an application to set aside the sale the Collector shall serve a notice on the *zamindar* and the auction purchaser fixing a date for hearing the same.

Second.—No application shall be entertained under this section if the applicant has instituted a suit in the Civil Court to set aside the sale unless he first withdraws such suit.

Third.—No application shall be allowed under this section without the consent of the *zamindar* if the defaulting *talukdār* or tenure-holder is liable or has agreed to pay on behalf of the *zamindar* any revenue or cess due to ²[the State Government] from the *zamindar* and such revenue or cess has not been paid to ³[the State Government] or deposited in Court before the date fixed for the hearing of the application.

Fourth.—If no objection is made by the *zamindar* or the auction purchaser on the date fixed for the hearing of the application or on any subsequent date to which the hearing may be adjourned and the deposit required by the first clause of this section has been made within thirty days from the date of the sale, the Collector shall allow the application and make an order setting aside the sale, and shall pass orders for the disposal of the money deposited by the applicant and the refund of the purchase money.

Fifth.—If any objection is made by the *zamindar* or auction purchaser the Collector shall refer the application together with the objection to the nearest Civil Court having jurisdiction and such Civil Court shall decide whether the applicant is entitled under this section to have the sale set aside, and shall either dismiss the application or make an order setting aside the sale, and shall pass such further orders regarding the disposal of the money deposited by the applicant, the refund of the purchase money, the payment of costs or any other matter arising out of the application as it thinks fit.

The Civil Court may, at its discretion, make suitable arrangements for protection of the *taluk* or tenure but the *patnidar* or tenure-holder shall be allowed to remain in possession if he pays to the Court in advance six months' rent payable by him for such *patni* or tenure or gives security for one year's rent to the satisfaction of the Court. If such payment is not made or security is not given the Court may appoint a receiver for the *patni* or tenure.

Sixth.—The Civil Court may direct that any sum in deposit with the Collector under the first or third clause of this section

¹Inserted by section 9(a) of the Bengal Patni Taluks Regulation (Amendment) Act, 1940 (Ben. Act XV of 1940).

²See foot-note 5 on page 192, *ante*.

(Section 15.)

shall be invested pending decision of the application by the Civil Court and thereupon the Collector shall remit the said sum to the Civil Court for investment.

Seventh.—Notwithstanding anything contained in this section the *zamindar* may, at any time after the sale-proceeds have been deposited under section 9, if such sale-proceeds are still in deposit and the sale has not been set aside, withdraw therefrom an amount equal to the amount on account of which the sale was made or the whole amount of the sale-proceeds less the one *per cent.* due to ¹[the State Government], whichever is less, and if the sale is thereafter set aside by the Collector or the Civil Court under this section an amount equal to the amount so withdrawn by the *zamindar* shall be paid out of the deposit made by the applicant under sub-clause (b) of the first clause of this section to the auction purchaser instead of to the *zamindar*.

Eighth.—The provisions of this section shall apply to the setting aside of the sale of a share or portion of a *patni taluk* whenever a separate account shall have been ordered to be opened in respect of such share or portion under section 6A.]

15. *First.*—³[On the expiry of thirty days from the date of any sale made under this Regulation, or if there has been a resale within thirty days of the original sale if the entire amount of the purchase money has been paid by the purchaser, and if no application under section 1-A to set aside the sale is pending], such purchaser shall receive from the officers conducting the sale a certificate of such payment.

The purchaser shall then proceed with the certificate in question to procure a transfer to his name in the *cutcherry* of the *zamindar*, and upon furnishing security, if required, to the extent of half the *jama* or annual rent, he shall receive the usual "*amaldustauk*" or order for possession, together with the notice to the *raiyyats* and others to attend and pay their rents henceforward to him.

The *zamindar* shall also be bound to furnish access to any papers connected with the tenure purchased that may be forthcoming in his *cutcherry*; and should he in any manner delay the transfer in his office, or refuse to give the orders for possession, notwithstanding that good and substantial security shall have been furnished or tendered on requisition, the new purchaser shall be entitled to apply direct to the Court, and he shall receive the orders for possession, and shall be put in possession, of the lands by means of the *nazir*, in the same manner as possession is obtained under a decree of Court.

Provided, however, that, if the delay be on account of the

¹See foot-note 5 on page 192, *ante*.

²Inserted by section 9(b) of the Bengal Patni Taluks Regulation (Amendment) Act, 1940 (Ben. Act XV of 1940).

³These words were substituted for certain words by section 4 of the Bengal Patni Taluks Regulation (Amendment) Act, 1933 (Ben. Act IV of 1933).

of 1819.]

(Sections 16, 17.)

zamindar's contesting the sufficiency of the security tendered, the rule contained in section 6 of this Regulation shall be observed.

Procedure
in case of
opposition
to
purchaser.

Second.—When the new purchaser shall proceed to take possession of the lands of his purchase, if the late incumbent himself or the holders of tenures or assignments derived from the late incumbent, and intermediate between him and the actual cultivators, shall attempt to offer opposition, or to interfere with the collections of the new purchaser, from the lands composing his purchase, the latter shall be at liberty to apply immediately to the Civil Court for the aid of the public officers in obtaining possession of his just rights.

A proclamation shall then issue, under the seal of the Court and signature of the Judge declaring that the new incumbent having, by purchase at a sale for arrears of rent due to the zamindar, acquired the entire rights and privileges attaching to the tenure of the late *talukdâr*, in the state in which it was originally derived by him from the zamindar, he alone will be recognised as entitled to make the *zamindari collections* in the *mufassal*, and no payments made to any other individual will on any account be credited to the *rai-yats* or others in any ¹*suit for rent ²* * * or on any other occasion whatever when the same may be pleaded.

Procedure
in case of
continued
opposition.

Third.—Should the late incumbent or his late under-tenants continue to oppose the entry of the new purchaser, notwithstanding the issuing of such a proclamation, or should there be reason to apprehend a breach of the peace on the part of any one, the aid of the police-officers and of all other public officers who may be at hand and capable of affording assistance shall be given to the new purchaser, on his presenting a written application for the same; and in the event of any affray or breach of the peace occurring, the entire responsibility shall rest with the party opposing the lawful attempt of the purchaser to assume his rights.

16. [*Sale of under-tenures for arrears.*].—*Rep. by the Bengal Rent Recovery (Under-tenures) Act, 1865 (Ben. Act VIII of 1865).*

17. *First.*—The following rules have been enacted for the disposal of the proceeds of any sale made under the rules of this Regulation.

Disposal
of
proceeds
of sales.
Deduction
on
account
of
State
Govern-
ment.

Second.—One per cent. shall first be deducted from the net proceeds realised, and shall be carried to the account of ³[the State Government], for the purpose of meeting the expense of any extra establishments which it may be necessary to maintain for carrying into effect the provisions of this Regulation.

¹The word "summary," which was repealed by the Repealing Act, 1874 (XVI of 1874), is omitted.

²The words and figures "brought under the provisions of section 15, Regulation 7, 1799, or in any application to stay process by distraint, under the rules of Regulations 5, 1812" were repealed, *ibid*.

³See foot-note 5 on 192, *ante*.

(Section 17.)

Payment
to *zamindars*.

Third.—The balance on account of which the sale may have been made shall next be made good in full (with interest and all charges incurred in bringing the *taluk* to sale) to the *zamindar* or other person to whom the same may be due :

Provided, however, that no former balances, beyond those of the current year (or of that immediately expired, if the sale be at the commencement of the following year), shall be included in the demand to be thus satisfied. Such antecedent balances, if the *zamindar* shall have omitted to avail himself of the process within his reach for having them satisfied at the time, will have become in fact mere personal debts of the individual *talukdâr*, and must be recovered in the same way as other debts by a regular suit in the Court.

¹[The State² Government may prescribe by rules the amount of charges incurred by the *zamindar* in bringing a *taluk* to sale under this Regulation.]

Disposal
of
remainder.

Fourth.—Any excess that may remain after satisfying the demand of the *zamindar*, in the manner above described, shall be forthwith sent by the officer conducting the sale to the treasury of the Collector or Assistant Collector of the district, to be there held in deposit to answer the claims of the *talukdârs* of the second degree, or of others, who, by assignments of the defaulter, may be at the time in possession of a valuable interest on the land composing the *taluk* sold, or on any part of it.

Under-
tenants
free to
prosecute
for price
of their
interest
or com-
pensation.

Fifth.—It shall be competent to any one conceiving himself to possess such an interest to bring forward his claim to the price he may have paid for the same, or for a just compensation for the loss sustained by him in consequence of the sale, by instituting a regular suit at any time within two months from the date of sale.

If the Court shall, on investigation, consider the plaintiff's claim to be an equitable one, the Court will award to the claimant either the price he may have originally paid, or the value of the interest at the time of sale, or any other amount that may be deemed just and equitable under all the circumstances.

If there be more claimants than one, payment shall not be made from the deposit until the whole of the claims be settled; and, in case the value assessed upon the whole should exceed the amount in deposit, such amount shall be divided proportionately, and the remainder stand as a personal debt against the defaulter, to be realised from him by the usual process for the execution of decrees.

¹Inserted by section 10 of the Bengal Patni Taluks Regulation (Amendment) Act, 1940 (Ben. Act XV of 1940).

²The word "State" was substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

of 1819.]

(Section 17.)

Sixth.—Provided, however, that no *talukdār* of the second degree or other possessor of an assigned interest upon the land of the tenure sold, who may be holding under a stipulation for the payment of an annual amount in the way of rent, shall be entitled to recover compensation for the loss of such tenure or assignment upon its becoming cancelled by sale of the superior *taluk*, except after exhibiting proof that the whole amount of the rent demandable from himself has been paid or lodged for the purpose prior to the date of sale.

Suit not to lie if under-tenant be himself in arrear at time of sale.

Seventh.—Should no claims upon the purchase-money of a *taluk* sold as above be brought forward by any under-tenants or assignees within the period of two months from the date of sale, or should the amount claimed by those who may have sued not equal the entire deposit, the defaulter whose tenure may have been sold shall be at liberty to petition the Court for the amount so held in deposit, or for the excess thereof, as the case may be, and he shall receive a certificate under the seal of the Court, of there being no claims to afford ground of detention for the whole or any part of the deposit; and, upon exhibiting such certificate to the Collector the amount set free thereby shall be to his receipt.

When defaulter to receive excess unclaimed.

In the same manner, upon executing a decree passed in favour of any under-tenants or assignees, they shall receive certificates under the seal of the Court, declaring the amount adjudged to them out of the deposit; and upon exhibiting these certificates the amount shall be paid severally to their receipts by the Collector.

Eighth.—¹[(1)] It shall be competent to any party interested in a deposit to withdraw the whole or any part thereof on substituting ²[the State Government] securities, bearing interest, in lieu of the money so held in deposit; such securities to be taken at the rate of discount or premium of the day ³* * *

Substitution of State Government securities for cash in deposit.

⁴(2) On the application of any of the parties to any suit relating to the sale of a *taluk* or the disposal of purchase-money of the *taluk* sold, the Civil Court may direct that any sum held in deposit under the fourth clause of this section shall be invested pending the further orders of the Court, and thereupon the Collector shall remit the said sum to the Court for investment.

¹Clause *Eighth* was re-numbered as paragraph (1) of clause *Eighth* by section 2 of the Bengal Patni Taluks Regulation (Amendment) Act, 1936 (Ben. Act. XVII of 1936).

²See foot-note 3 on page 192, *ante*.

³The words "as shown by the Government Gazette last received" which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

⁴Paragraph (2) was added by sec. 2 of the Bengal Patni Taluks Regulation (Amendment) Act, 1936 (Ben. Act. XVII of 1936).

[Ben. Reg. VIII of 1819.]

(Sections 17A—19.)

Registra-
tion
of names
of succes-
sors to,
and
transfe-
rees of,
patni
taluks.

Ben. Act
XV of
1940.

¹17A. When succession to or transfer by sale, gift or otherwise of a *patni taluk* takes place, or in case of succession or transfer taking place before the commencement of the Bengal Patni Taluks Regulation (Amendment) Act, 1940, within one year from the date of such commencement, the person succeeding or the transferee, as the case may be, shall give notice of the succession or transfer and of his name and address to the Collector in such form, as may be prescribed by the ²[State] Government.

He shall also pay to the Collector such fee for the service of the notice on the *zamindar* as may be specified by the ³[State] Government.

The Collector shall cause the notice to be served on the *zamindar* named in the notice or his common agent, if any, in such manner as may be prescribed by rules to be made by the ⁴[State] Government :

Provided that, where at the instance of the person succeeding, mutation is made in the rent-roll of the *zamindar* within six months of the succession, the person succeeding shall not be required to give notice under this section.

A person becoming entitled to a *patni taluk* by succession or by transfer shall not be entitled to receive by registered post the notices referred to in clauses *second* and *third* of section 8, unless the duties imposed upon him by this section have been performed.

In this section the words "person succeeding", "transferee", "purchaser" "and the person becoming entitled to a *patni taluk* by succession or by transfer" include the successors in interest of such persons, but do not include the *zamindar* where he is the sole *zamindar*.

This section shall apply to the transfer or succession to a share or a portion in a *patni taluk*.

18, 19. [*Rules regarding attachment of land of defaulter; summary process against person of defaulter.*—Rep. by the Bengal Rent Act, 1859 (X of 1859.)

¹Inserted by section 11 of the Bengal Patni Taluks Regulation (Amendment) Act, 1940 (Ben. Act XV of 1940).

²See foot-note 2 on page 196, *ante*.

Bengal Regulation I of 1820

(The Bengal Patni Taluks Regulation, 1820.)¹

SHORT TITLE GIVEN	...	Act V of 1897.
REPEALED IN PART AND AMENDED		Act I of 1903.
AMENDED	... ..	Ben. Act VIII of 1865.

(11th January, 1820.)

A Regulation for providing that all sales of certain taluks made answerable by sale for arrears of the zamindar's rent shall be conducted in the mode prescribed by Regulation VIII, 1819,² for the sales therein described.

1. Whereas it has been omitted to provide in the rules of Regulation VIII, 1819,² whether, in case the proprietor of an estate paying revenue to Government should desire to bring to sale a saleable tenure of the nature defined in clause first, section 8, of that Regulation, for the realization of arrears of rent due thereupon, by any legal process other than that prescribed by the second and third clauses of the said section, such sale should be made in the public manner provided for the periodical sales therein described ;

Preamble.

And whereas it is consonant with justice, and was intended by the said Regulation, that, in every case of the sale of such tenures for arrears of the zamindar's rent, the sale should be public, for the security of the interests of the owner of the tenure sold, which object can in no manner be duly secured except the sales to be so made be conducted by an officer of Government in the same manner as the periodical sales provided for by section 8 of the said Regulation ;

the following additional rule has accordingly been passed by the Governor General in Council, to take effect, from the date of its promulgation, within the several districts of Bengal, including Midnapore :—

2. First.—Whenever the proprietor of an estate paying revenue to Government shall desire to cause any tenure of the nature of those described in clause first, section 8, Regulation VIII, 1819,² to be sold for arrears of rent due to him on account thereof, and shall, under any summary process authorised by ³[law] have acquired the right of causing such sale to be made, the same shall be conducted, after application from the zamindar, by the Registrar or acting Registrar of the Zilla ⁴* *

Rules of Reg. VIII, 1819, for periodical sales for zamindar's arrears of rent, extended to other sales for rent.

¹SHORT TITLE.—This short title was given by the Amending Act, 1897 (V of 1897).

LOCAL EXTENT.—This Regulation extends to the whole of the former Province of Bengal—see the concluding paragraph of sec. 1.

²The Bengal Patni Taluks Regulation, 1819.

³This word was substituted for the words "the general Regulations" by the Amending Act, 1903 (I of 1903).

⁴The words "or City," were repealed by the Amending Act, 1903 (I of 1903).

[Ben. Reg. I of 1820.]

(Section. 2.)

* Court, or, in his absence, by the person in charge of the office of Judge of the district in the mode prescribed by Regulation VIII² above quoted for periodical sales.

Notice by
proclama-
tion.

Second.—Ten days' notice shall be given before proceeding to sale, by proclamation to be stuck up at the *cutcherry* of the Court and at that of the Collector of the district.

Rules ex-
tended to
sales
hereunder.

Third.—The rules of sections 9, 11, 13, 15, and 17, Regulation VIII, 1819,¹ are extended to all sales made after the manner herein provided.

¹The Bengal Patni Taluks Regulation, 1819.

Bengal Regulation VI of 1821

[The Bengal Land-revenue (Assistant Collectors) Regulation, 1821.]¹

SHORT TITLE GIVEN	...	...	Act I of 1903.
REPEALED IN PART			<div style="display: flex; align-items: center;"> <div style="font-size: 3em; margin-right: 10px;">{</div> <div> Act XII of 1873. Act XVI of 1874. Act XII of 1876. Act XII of 1891. </div> </div>
AMENDED			Act I of 1903.
ADAPTED	...	...	<div style="display: flex; align-items: center;"> <div style="font-size: 3em; margin-right: 10px;">{</div> <div> (a) The Government of India (Adaptation of Indian Laws) Order, 1937. (b) The Adaptation of Laws Order, 1950. </div> </div>

*A Regulation * * * for explaining the duties of an Assistant Collector of revenue and for defining the duties and powers vested in Assistant Collectors or other officers appointed to the charge of the revenues of parganas or other local divisions or employed in the performance of any portion of the functions ordinarily belonging to the Collectors of land revenue.*

1. * * * * * Whereas it is expedient to explain the duties which may be performed by the Assistants to the Collectors of revenue, and to define the duties and powers vested in Assistant Collectors or other officers when appointed to the charge of the revenues of parganas or other local divisions, or when employed in the performance of any portion of the functions ordinarily belonging to Collectors of the land-revenue ;

Preamble.

the following rules have been enacted, to be in force from the date of their promulgation throughout the territories subject to the Presidency of Fort William.

2, 3. [Power to confer magisterial powers on Collectors, and vice versa; oath to be taken by such Collectors and Magistrates.]
—Rep. by the Repealing Act, 1873 (XII of 1873).

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Regulation was passed for the whole of the former Province of Bengal—see the concluding clause of sec. 1.

It has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), sec. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), section 3, to be in force in the following Scheduled Districts, namely:—

West Jalpaiguri in the Jalpaiguri district; and the Western Hills, the Tarai and the Dumson Subdivision, in the Darjeeling district.

²Portion of the title which was repealed by the Amending Act, 1891 (XII of 1891), is omitted.

³Portion of section 1 which was repealed by the Repealing Act, 1876 (XII of 1876), is omitted.

[Ben. Reg. VI

(Sections 4—8.)

4. to 6. [Magistrates and Collectors, in the exercise of such powers, to be guided by Regulations, &c., in force; Magistrates employed in the collection of revenue to preserve records; rules declaring Collector amenable to Zilla and City Courts to be applicable to such Magistrates.]—Rep. by the Repealing Act, 1876 (XII of 1876).

Institution
of suit in
Zila Court
for re-
covery of
public
revenue.

7. In the institution of suits for the recovery of the public revenue, or in any case in which the institution of a suit by the Collector in the Zila ¹* * * * Courts is authorized or directed ²[by law], a Magistrate or Joint Magistrate or Assistant to a Magistrate, employed in the collection of the revenue, not being himself in charge of the office of Judge of a Zila ¹* * * * Court, shall proceed according to ³[the law for the time being in force] for the guidance of the Collectors under similar circumstances.

Power to
alter limits
of Collec-
torships,
and
number of
officers
employed
as
Collectors.

8. *First.*—It is hereby declared and enacted that it is and shall be lawful for the ⁴[State Government] to cause such alterations to be made in the limits of the several Collectorships, and in the number of the officers employed as Collectors of land-revenue, as may from time to time appear expedient, as well as to vest such officers, being covenanted servants ⁵* * * * with authority to exercise the whole or any part of the functions ordinarily exercised by Collectors of land-revenue in such *mahal* or *mahals* belonging to such district or districts as may from time to time be deemed expedient; and any officers so employed shall perform their prescribed duties in the same manner, and subject to the same conditions and liabilities, as attached to Collectors of land-revenue in regard to such duties.

Power to
depute
subordi-
nate officer
to perform
Collector's
duties.

Second.—It shall also be competent to the Board of Revenue or other authority exercising the powers of the Board to depute any of the officers subordinate to their authority to exercise and perform all or any of the powers and duties ordinarily vested in Collectors of land-revenue within such local limits as they may judge expedient;

Provided, however, that in all such cases the Board or other authority aforesaid shall, on the day in which they may depute

¹The words "or City" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

²These words were substituted for the words "by the Regulations" by the Amending Act, 1903 (I of 1903).

³These words were substituted for the words "the Regulations already in force," *ibid.*

⁴The words "Provincial Government" were substituted for the words "Government" by paragraph 4(I) of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order 1950.

⁵The words "of the Honourable Company," which were repealed by the Repealing Act, 1876 (XII of 1876), are omitted.

of 1821.]

(Section 8.)

any officer as aforesaid or as soon after as practicable, report their having done so for the information and orders of the ¹[State Government].

Third.—The Collectors of revenue are hereby authorized with the sanction of the Board of Revenue ²* * * to delegate to their Assistants any part of their prescribed duties, which, from the extent of their general business or other cause, they may be unable to give due attention to themselves :

Power of Collectors to delegate part of their duties to their assistants

Provided always that in the event of a Collector deputing his Assistant to make local inquiries, or for any other purpose connected with the collection of the public revenue, he shall immediately report the same for the information and orders of the Board of Revenue ³* * * to which he may be subordinate.

Fourth.—[Oath to be taken by Assistant Collector.]—*Rep. by the Repealing Act, 1873 (XII of 1873).*

Fifth.—Assistants or other officers exercising the power of Collectors of revenue, or any portion thereof, under the provisions of this Regulation, shall be guided in every respect ³[by the laws] which have been or may be enacted for the management and collection of the revenue, as far as the same may be applicable to the duties committed to them respectively, and shall be considered responsible for the due performance of the duties entrusted to them, and shall be amenable to the Civil Courts of Judicature for any acts done by them in their official capacity, in opposition ⁴[to law], in the same manner, and under the same rules as the Collectors of revenue.

Assistants, etc., to be guided by Regulations, responsible for performance of duties, and amenable to Civil Courts.

¹See foot-note 4 on page 202, *ante*.

²The words "or the Boards of Commissioners," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

³These words were substituted for the words "by the Regulations" by the Amending Act, 1903 (I of 1903).

Bengal Regulation VII of 1822
(The Bengal Land-revenue Settlement Regulation, 1822.)

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Bengal Regulation VII of 1822

(The Bengal Land-revenue Settlement Regulation, 1822)¹

EXTENDED BY	...	Ben. Regn. IX of 1825. Act XIII of 1858. Act XI of 1859.
SUPPLEMENTED	...	Ben. Regn. IX of 1833. Ben. Act III of 1868.
SHORT TITLE GIVEN		Act I of 1903.
REPEALED IN PART	...	Ben. Regn. IX of 1833. Act VIII of 1835. Act XXV of 1837. Act X of 1859. Act XX of 1865. Act XVI of 1874. Act XII of 1876. Act XII of 1891.
REPEALED IN PART AND AMENDED		Act I of 1903.
AMENDED	...	Ben. Act V of 1915.
ADAPTED	...	(a) The Government of India (Adaptation of Indian Laws) Order, 1937. (b) The Adaptation of Laws Order, 1950.

(8th August, 1822.)

*A Regulation for declaring principles according to which the settlement of the land-revenue in² * * * [Cuttack,] Pataspur and its dependencies is to be hereafter made, and the powers and duties belonging to Collectors or other officers employed in making, revising or superintending settlements; ³ * * * for defining, settling and recording the rights and obligations of various classes and persons possessing an interest in the land, or in the rent or produce thereof; and for vesting the Revenue-authorities with judicial cognizance in certain cases of suits and claims relating to land, the rent and produce of land.*

I. Whereas the existing settlement of the land-revenue in the Ceded Provinces will expire with the present Fasli year,⁴ and it has therefore become necessary to declare and enact the principles and rules according to which the demand of the State is thereafter to be regulated, and the manner in which future settlements and revisions of settlements are to be conducted.⁵

Preamble.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

²The words "the Ceded and Conquered Provinces, including" which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

³The words "for continuing, with certain exception, the existing leases within the said provinces for a further term of five years" which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

⁴i.e., the 1st September, 1822.

⁵The portion printed in italics is obsolete, Bengal Regulation VII of 1822 having been repealed in the North-Western Provinces by the N.-W.P. Land-revenue Act, 1873 (XIX of 1873).

(Section 1.)

And whereas a moderate assessment being equally conducive to the true interests of Government and to the well-being of its subjects, it is the wish and intention of Government that in revising the existing settlement the efforts of the Revenue-officers should be chiefly directed not to any general and extensive enhancement of the *jama* but to the objects equalizing the public burthens, and of ascertaining, settling and recording the rights, interests, privileges and properties of all persons and classes owning, occupying, managing or cultivating the land, or gathering or disposing of its produce, or collecting or appropriating the rent or revenue payable on account of land, or the produce of land, or paying or receiving any cesses, contributions or perquisites to or from any persons resident in, or owning, occupying or holding parcel of, any village or *mahal* :

And whereas, with these views and intentions, the Governor General in Council¹ has considered it to be expedient and proper, with the exception hereinafter specified, to continue the existing assessment in all cases in which the settlement has been formed with *zamindars* or other persons acknowledged as proprietors or possessors of a permanent interest in the *mahal* for which they may have engaged, until a new settlement can be made, combining, with the revision of the Government *jama* and the deliberate investigation of the facts by the determination of which its amount must be regulated, a full inquiry into, and a careful settlement of the rights and interest of all classes connected with the land :

And whereas the same principles are applicable to [*the district of Cuttack,*] the *pargana* of Pataspur and its dependencies, of which the settlement will expire with the present "*amli*" year² :

And whereas it has appeared expedient to make special provision for the early settlement of ³* * * the *pargana* of Pataspur and its dependencies :

⁴* * * *

And whereas it is the desire of Government that the proceedings held, and the records formed, by the Collectors when making settlements or otherwise specially employed in conducting inquiries of the above nature should be such as that all demands, claims and suits may be adjudged and determined according to the facts therein stated, until the same shall have been formally altered, or it shall be shown, by the result of a full investigation in a regular suit, that the proceeding or record of the Collector was erroneous or incomplete :

And whereas it is necessary to declare and define the powers and authority to be vested in Collectors in the conduct of the

¹See the last paragraph of foot-note on page *ante*.

²*i.e.*, the 2nd September, 1822.

³The words "*the district of Gorakhpur, the chakla of Azamgarh,*" which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

⁴Portion relating to "*the Conquered Provinces*" and "*the Province of Bundelkhand*" were repealed, *ibid*.

The Bengal Land-revenue Settlement Regulation, 1822. 211
of 1822.]

(Section 2.)

said inquiries, and the adjustment of the differences arising out of or made known by them :

And whereas it further appears advisable that the revenue-officers should in certain cases be vested with authority judicially to receive, hear, investigate and determine suits, claims and demands of the above description :

And whereas it appears to be expedient to declare and explain the views and intentions of Government relative to the rights to be enjoyed and exercised by the *sadar malguzars* or persons admitted to engage for the payment of the Government revenue, and by persons collecting the rents of the land or revenue of Government, without being subject to the payment of any portion of it to the public treasury, such as *jagirdars* and other owners or managers of *lakhiraj* lands ; and it is particularly necessary, in the case of estates held in *pattidari* or *bhaiya chara* tenure, to make further provision for protecting the sharers who have not been admitted to engagement with Government against the encroachments of the *sadar malguzar*, and likewise to secure the latter against the consequences of the embezzlement or misappropriation by the former of the funds whence the Government revenue ought to be discharged.

For the purposes and objects above specified the following rules have been enacted, to be in force ¹* * * * in [the district of Cuttack,] the *pargana* of Pataspur and its dependencies.

2. *First to Fifth.*—[Extension of existing settlements in Ceded Provinces and Cuttack; proclamation of proposed extension; Gorakhpur and Azamgarh excluded; existing leases in Pataspur to continue from year to year.]—Rep. by the Repealing Act, 1874 (XVI of 1874).

Sixth —²* * * * if any *zamindar* or other *malguzar* ³[acknowledged as the proprietor or possessor of a permanent interest in the *mahal* for which he has engaged], who may now or hereafter be under engagement for the payment of the revenue demandable by Government on account of any *mahal*, shall be allowed by the Revenue-authorities to continue in the management of such *mahal* after the expiration of such engagement, and shall do or direct any act relative to the cultivation or management of such *mahal*, or the settlement, assessment or collection of the rents of such *mahal*, in or on account of any year subsequent to the term of such engagement, such *zamindar*

General rule relative to *zamindars* holding on after expiration of their leases.

¹The words "from the date of their promulgation, throughout the Ceded and Conquered Provinces" which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

²Formal words which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

³These words were substituted for the words "as aforesaid" by the Amending Act, 1903 (I of 1903).

(Section 3.)

or other *malguzar* aforesaid shall be held to be responsible on account of such year for the same revenue as may have been demandable from him for the year preceding, unless otherwise specially agreed upon :

Provided further that it shall be competent for Collectors or other officers exercising the power of Collector, with the sanction of the Board or Commissioner to whom they may be subordinate, at any time, not being more than six months previous to the expiration of a settlement, to call upon the *zamindars* or other *malguzars* as aforesaid to declare whether or not they are willing to continue their engagements for the ensuing year ; and, if such *zamindars* or other *malguzars* shall not forthwith notify their refusal to do so, they shall be held to have agreed to such an extension of their leases at the existing assessment, and so on, from year to year, as aforesaid.

Zamindars or other *malguzars* who may be allowed to hold on from year to year shall not be chargeable with any additional revenue on account of any year, unless the Collector or other officer exercising the powers of Collector shall notify his intention to revise the assessment on or before the commencement of such year, unless where otherwise specially provided.

Settle-
ments how
made.

3. With respect to estates which are at present let to farm, a settlement thereof shall be made on the expiration of the existing leases for such a period as the ¹[State Government] may direct.

A preference shall be given to the *zamindars* or other persons possessing a permanent property in the *mahals*, if willing to engage for the payment of the public revenue on reasonable terms :

Provided also that, in cases wherein such *mahals* may be let in farm, the term of the lease granted to the farmers shall not exceed twelve years.

The above rules shall likewise be applicable to estates now held *khas*.

So in any case wherein the *zamindars* and other proprietors may refuse to continue their existing engagements, or to enter into new engagements, on equitable terms, it shall be competent to the Revenue-authorities to let the lands in farm for such period, not exceeding twelve years, as the ¹[State Government] shall appoint, or to assume the direct management of them, and to retain them under *khas* management during the period aforesaid or such shorter period as may be judged proper :

Provided further that, if in any case it shall appear to the Revenue-authorities that the continuance or admission of any *Raja*, *zamindar*, *talukdar* or other person who may have engaged,

¹The words "Provincial Government" were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

(Sections 4, 5.)

or may claim to engage, for any *mahal* or *mahals*, in or to the management of such *mahal* or *mahals*, would endanger the public tranquillity or otherwise be seriously detrimental, it shall be their duty to report the circumstances ¹[to the State Government], and it shall be competent to the ²[State Government] ³[by notification in the ⁴Official Gazette], to cause such *mahal* or *mahals* to be held *khas* or let in farm, for such term as may appear expedient and proper, not exceeding the period above specified.

4. In admitting particular parties to engage it was in no degree the intention of Government to compromise private rights or privileges, or to vest the *sadar malguzars* with any rights not previously possessed by them, excepting in so far as their interest in the land for which they may have engaged might be improved by the limitation of the Government demand, or otherwise by the resignation in their favour of rights previously vested in Government itself, or as it may have been found necessary, with a view to the punctual realization of the public dues, to vest the *sadar malguzar*, by special Regulation, with authority of distraint, or other powers of coercion over the under-tenants.

On the contrary, it is the anxious desire of Government, and the bounden duty of its officers, to secure every one in the possession of the rights and privileges which he may lawfully possess or be entitled to possess.

In pursuance of this principle, it is hereby declared and enacted that nothing in the above provisions for extending the existing leases, or in the stipulations of the existing settlements, do or shall be construed to bar the Revenue-officers, duly empowered in that behalf, from interfering to adjust the respective rights of the *sadar malguzars* and their under-tenants ; nor shall any claims to a remission or abatement of revenue be admitted on the ground of any decision or order passed in that behalf ; but, if such decision or order shall operate materially to reduce the profits derived by any *zamindar* or *malguzars* from the *mahal* owned or managed by him, it shall be competent for such *zamindar* or *malguzar* to relinquish his engagements, and the Revenue-officers shall in such case proceed to make a settlement of the *mahal de novo*.

5. [*First.—Repeal of provisions relative to malikana and nankar.*—Rep. by the Amending Act, 1903 (I of 1903).

Admission of particular persons to engage for payment of revenue, not to bar Revenue-officers from interfering to adjust rights of other persons or classes.

¹The words "to the Provincial Government" were substituted for the words "to Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

²See foot-note 1 on page 212, *ante*.

³The words "by an Order in Council" in the original text, are to be read, as if the words "by notification in the local Official Gazette" were substituted therefor—see the Amending Act, 1903 (I of 1903).

⁴The words "Official Gazette" were substituted for the words "local Official Gazette" by paragraph 4(I) of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Section 5.)

Malikana to be allowed to proprietors of estates farmed or held khas.

Second.—The proprietors of estates let in farm or held *khas* shall be entitled to receive an allowance of *malikana*, at such rate as the Board ¹* * or other authority exercising the powers of that Board may determine, anything in the existing Regulations notwithstanding: the said *malikana* to be apportioned in cases in which several proprietors may have heretofore held an estate under one common assessment, whether in joint tenancy or otherwise, according to the shares of each respectively:

Provided also that the *malikana* allowance granted to the proprietor or proprietors of any *mahal* shall not in any case be less than five *per cent.* on the net amount realized by ²[the State Government] from the lands; nor shall it exceed ten *per cent.* on that amount without the special sanction of the ¹[State Government]:

Provided further that, if the said proprietors shall in any case be in the receipt of any perquisite or the profits of any lands in lieu of the *nankar* formerly granted to them ⁴* * *, in consideration of their proprietary tenure, the amount of such allowance shall be deducted from the *malikana* to which they are by this section declared to be entitled:

Provided also that this rule shall not apply to such *zamindars* as may continue in the occupancy of their tenures whilst the *mahal* in which they are included is held *khas* or farmed, or of any part of them, that is to say, *zamindars* who may cultivate or lease their lands and pay the revenue to the farmer or Government officer; nor, without the special sanction of ³[the State Government], to any *malguzar*, *zamindar* or other proprietor or holder of land who may directly or indirectly continue to draw any allowance from the *raiya*s of the lands farmed or held *khas*:

Provided also that *malguzars*, not being actual proprietors of the land included in the estate for which they may have formerly been under engagements, though recorded in the accounts of past settlements as *zamindars*, *talukdars* or the like, or being proprietors of a part only of such land, shall not receive the above allowance on the *jama* of the estate, but shall receive such allowance in lieu of their title of management as it may appear to ²[the State Government] to be equitable to assign, in addition to the *malikana* to which they may be entitled on account of any lands held by them in actual property, and of which they may not retain the occupancy: and no *malikana* shall be granted to any *sadar malguzar* on account of lands the occupants of which may deny his right of property, until he

¹The words "of Commissioners" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

²The words "the Provincial Government" were substituted for the word "Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

³See foot-note 1 on page 212, *ante*.

⁴The words "by the Native Governments or otherwise" were omitted by para. 3 and the Sixth Schedule of the Adaptation of Laws Order, 1950,

(Section 6.)

shall have established his right by regular suit in a Court of Justice, or to the satisfaction of the Board. But in such cases such provision will be made for the intermediate support of the party as the ¹[State Government] may, on the recommendation of the Board, see fit to direct.

Third.—Provided also that, if any *zamindar* or *sadar malguzar* shall have been called upon by a Collector or other officer exercising the powers of a Collector to state the highest amount of *jama* for the payment of which he may be willing to engage, and shall have stated the same accordingly, the sum so stated by such *zamindar* or *sadar malguzar*, and not the *jama* ultimately realized by ²[the State Government], shall form the basis on which his *malikana* allowance shall be adjusted; and in such case it shall and may be lawful for the Revenue-authorities to limit the said allowance to five *per cent.* on the said sum, or to a portion thereof, according to the extent of the proprietary interest possessed by the said *zamindar* or *sadar malguzar* :

Zamindars may be called upon to state jama for which they are willing to engage.

Provided also that, if a *zamindar* or *sadar malguzar*, when so called upon, shall fail to specify or tender any sum as aforesaid, then and in that case the net revenue derived by ²[the State Government] from the *mahal*, on account of the year preceding that in which the Collector or other officer aforesaid may make the said requisition, shall be taken as the sum by which the amount of *malikana* (not being less than five, nor more than ten, *per cent.* on the same) shall be adjusted.

6. *First.*—In cases wherein the existing engagements may be continued under the rule contained in section 2 of this Regulation, it shall and may be lawful for the Collectors, with the sanction of the Board, § * * * to enter at any time in the course thereof on a revision of the settlement notwithstanding such continuance of the existing leases, and to adopt such measures as may be requisite for ascertaining and determining the extent and produce of the lands, and the amount of *jama* properly demandable therefrom, and for procuring and recording the fullest possible information in regard to the rights, interests, privileges and properties of the agricultural community, and to determine the same, with the same powers and authority as they now are or may hereafter be entitled to exercise in forming the settlement of estates open to re-assessment.

Revenue-officers may revise settlement of estates of which existing leases shall be extended under section 2 during continuance of such extended lease.

Second.—The said revision of the settlement shall be made village by village and *mahal* by *mahal*; and such number of *mahals* shall be revised in each year, as the Board, under the orders of the ¹[State Government], may direct.

Revision of settlement, how made.

¹See foot-note 1 on page 212, *ante*.

²See foot-note 2 on page 214, *ante*.

³The words "of Commissioners" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

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Revision of settlement not to operate to alter jama payable on account of lands included in existing engagements.

Third.—Such revision of the settlement shall not operate to disturb the existing engagements during the period for which they may be continued under the provisions of section 2 of this Regulation in so far as such engagements relate to the amount of jama demandable by Government; but the said engagements shall be held and considered to include only such villages and lands as may be specified in the proceedings or accounts of the settlement last concluded; and, if on the revision of the settlement of any *mahal* it shall be found that there has been any material error or concealment of lands belonging to such *mahal*, the Collector shall be authorized, subject to the orders of the Board, separately to assess the lands so withheld from the knowledge of the Revenue-authorities, in the same manner and with the same powers as he would assess an unsettled *mahal* :

Provided also that nothing in this or the preceding sections shall be construed to prevent the Revenue-officers from passing and enforcing such orders in regard to the rights and interests to be enjoyed by the different classes of persons connected with any *mahal*, during the period for which the existing settlement has been extended, as they may or shall be authorized to pass or enforce when adjusting the assessment of an unsettled *mahal*.

Fourth.—[Revision of settlement in Conquered Provinces and Bundelkhand.]—Rep. by the Amending Act, 1903 (I of 1903).

Leases to be granted on revision of settlement.

7. *First.*—When a Collector ¹* * * [in the Province of Cuttack] shall have completed the revision of the settlement of any *mahals* under the rules contained in the preceding section, it shall and may be lawful for him, subject to the orders of the Board ²* * * and ³[of the State Government], to grant to the proprietors, if willing to engage on adequate terms, renewed leases for such further term of years subsequent to the year 1234 *Fasli*⁴ or *Aml*i as the ⁵[State Government] may direct.

Jama for years subsequent to 1234, how adjusted.

Second.—The assessment to be demanded on account of the years subsequent to the year 1234 *Fasli*⁴ to which leases renewed as above may extend, shall be fixed with reference to the produce and capabilities of the land as ascertained at the time when the revision of the settlement shall be made unless under special circumstances justifying a prospective enhancement of the Government demand :

Provided also that the amount of such assessment shall not be raised above that of the present jama, unless it shall clearly appear

¹The words "in the Ceded Provinces or" which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

²The words "of Commissioners" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

³The words "of the Provincial Government" were substituted for the words "of Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

⁴i.e., A.D. 1826.

⁵See foot-note 1 on page 212, *ante*.

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that the net profits to be derived from the land by the zamindars and others who may be entitled to share in the profits arising out of the limitation of the Government demand will exceed one-fifth of that amount; and in cases wherein any increase may be demanded, the assessment shall be so regulated as to leave the zamindars and others aforesaid a net profit of twenty per cent. on the amount of the jama payable by or through them respectively: no abatement on the existing jama will be allowed unless on the clearest grounds of necessity.

Third.—The pattas granted on such revised settlements shall be held only to secure the malguzars from further demand during the term of their respective leases, on account of the lands specified in it, or described in the settlement rubakari of the Collector with such allowance for error as may be distinctly declared at the time of settlement.

Pattas granted on revised settlement to cover only lands specified.

Zamindars and other persons entering into engagements will be required therefore to afford the fullest and most correct information in regard to the raqba of mahals for which they may engage.

Fourth.—[Grant of renewed leases in Conquered Provinces and Bundelkhand].—Rep. by the Amending Act, 1903 (I of 1903).

Fifth.—If any zamindar or other sadar malguzar, the settlement of whose estate may be revised under the above rules, shall refuse to enter into suitable engagements for a further period beyond the term of the then current lease, or if after such revision the Revenue-authorities shall under any other circumstances deem it expedient to postpone taking further engagements for the payment of the revenue of any mahals until the expiration of the current leases, it shall be competent to them to do so; and in such case the several rules contained in section 3 of this Regulation, relative to estates of which the settlement will expire with the present year, shall on the expiration of the said leases be and be held applicable to such mahals.

Power to postpone final settlement until expiration of current leases.

Sixth.—The same rules shall also be applicable to the several mahals within * * * the pargana Patashpur and its dependencies, as they may respectively become, or be declared, open for re-settlement.

Rules applied to estates in Gorakhpur, etc.

8. Where the waste-land belonging to or adjoining any mahal is very extensive, so as considerably to exceed the quantity required for pasturage, or otherwise usefully appropriated, it shall be competent to the Revenue-officers to grant leases for the same to any persons who may be willing to undertake the cultivation in perpetuity, or for such periods as the [State Government] shall determine; and to assign to the zamindars or others who may establish a right of property in the lands so granted an allowance equivalent to ten per cent. on the amount payable to Government by the lessees, in lieu and bar of all

Letting of excess waste-lands.

Allowance to zamindars.

¹The words "the district of Gorakhpur, the chakla Azamgarh," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

²See foot-note 1 on page 212, ante.

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claims to or in the waste-lands, so granted, or such other perquisites or privileges as by the custom of the country they may appear in such cases entitled to receive.

Investigations by Collectors making or revising settlements,

9. *First.*—It shall be the duty of Collectors and other officers exercising the powers of Collectors, on the occasion of making or revising settlements of the land-revenue, to unite, with the adjustment of the assessment and the investigation of the extent and produce of the lands, the object of ascertaining and recording the fullest possible information in regard to landed tenures, the rights, interests and privileges of the various classes of the agricultural community.

For this purpose their proceedings shall embrace the formation of as accurate a record as possible of all local usages connected with landed tenures, as full as practicable a specification of all persons enjoying the possession and property of the soil, or vested with any heritable or transferable interest in the land or the rents of it, care being taken to distinguish the different modes of possession and property, and the real nature and extent of the interests held, more especially where several persons may hold interests in the same subject-matter of different kinds or degrees.

This record shall, in *pattidari* or *bhaiya chara* villages or the like, include an accurate register of all the co-parceners, not merely the heads of divisions, such as the *pattis*, *thoks* or *behris*, but also as far as possible of every person who occupies land, disposes of its produce or receives rent as proprietor or as agent for one or more proprietors holding land and disposing of its produce, or receiving the rents of it in common, with a detailed statement of the interior arrangements adopted by the brotherhood for the distribution of the profits derived from sources common to the co-parcency where any such exist, and for determining the share of the Government *jama* and of the village-expenses which each parcener is to contribute, or the other modes in which the engaging parcener or intermediate *pattidars* and *behridars* collect from the cultivators.

A record shall likewise be formed of the rates per *bigha* of each description of land or kind of produce demandable from the resident cultivators not claiming any transferable property in the soil, whether possessing the right of hereditary occupancy or not, and the respective shares of the *sadar malguzar* or other manager, and the cultivator, in lands cultivated under *kankut*, *batai* or similar engagements, with a distinct specification of all cesses or extra collections made by the *malguzar* or village-manager, or other.

The names of all the village-*patwaris* and village watchmen shall also be registered, with a statement of the amount and nature of the allowance assigned them.

And all *lakhiraj* tenures shall be carefully recorded, with a specification of the nature of the tenure.

The information collected on the above points shall be so arranged and recorded as to admit of an immediate reference

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hereafter by the Courts of Judicature, it being understood and declared that all decisions on the demands of the *zamindars* shall hereafter be regulated by the rates of rent and modes of payment avowed and ascertained at the settlement, and recorded in the Collector's proceedings until distinctly altered by mutual agreement, or after full investigation in a regular suit : and all cesses or collections not avowed and sanctioned, nor taken into account in fixing the Government *jama*, shall be held illegal and unauthorized, unless now or hereafter specially ¹[sanctioned by the State Government].

Second.—Provided also that it shall be competent to Collectors and other officers as aforesaid (subject to the orders of the Board ²* *) to grant *pattas* to the several *mufassal zamindars* and *rai-yats* or other owners or occupants of land, for the land owned or occupied by them, specifying the amount to be paid by them, and all the conditions attaching to their tenure; and a register of all *pattas* so granted shall form a part of the *rubakari* of settlement.

Third.—Provided, however, that, if from the number of estates of which the lease may at once expire in any district, or from any other special cause, it shall be found necessary, for the security of the Government revenue, to take engagements from any *zamindar*, *malguzar* or farmer, without completing the detailed inquiries above directed, it shall be competent to the ³[Board] of Revenue or other authority exercising the powers of ⁴[that Board] to cause engagements for the revenue to be taken in the manner heretofore in use, reporting the circumstance to the ⁵[State Government], but the term of the engagements so taken shall not exceed five years, and the rules relative to the revision of the settlements of *mahals* of which the existing leases have been extended under the provisions of section 2 of this Regulation shall be equally applicable to estates for which such engagements shall be taken.

10. First.—Of several parties possessing separate heritable and transferable properties in any parcel of land or in the produce or rent thereof, such properties consisting of interests of different kinds, it shall be competent to the ⁵[State Government] to determine and direct which of such parties shall be admitted to engage for the payment of the Government

Collectors, etc., may grant *pattas* to *mufassal zamindars* and *rai-yats*.

Power to take engagements for revenue without completing detailed inquiry.

Power to determine which of several holders of differing interests, having separate properties in same land, shall be admitted to engage, and to prescribe distribution of profit resulting from limitation of *jama*.

¹The words "sanctioned by the Provincial Government" were substituted for the words "sanctioned by Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²The words "of Commissioners" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

³This word was substituted for the word "Boards" by the Amending Act, 1903 (I of 1903).

⁴These words were substituted for the words "such a Board," *ibid*.

⁵See foot-note 1 on page 212, *ante*.

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revenue, due provision being made for securing the rights of the remaining parties.

It is further hereby declared and enacted that it is and ¹[shall be competent to the State² Government or such other authority to whom the power to confirm settlements may be delegated by the State² Government by notification in the ³*Official Gazette*] in confirming the settlement of any *mahal* in perpetuity or for a term of years, to determine and prescribe the manner and proportion in which the net rent or profit arising out of the limitation of the Government demand shall be distributed among the different parties possessing an interest in the lands appertaining to such *mahal* or in the rent or produce of such lands or *mahal*.

Mufassal settlements in cases where title of intermediate manager between Government and proprietors or hereditary occupants of soil are maintained.

Second.—In cases wherein any land appertaining to a *mahal* hitherto recognized as the *taluk*, *zamindari* or the like, of one or more *sadar malguzars*, may be owned or occupied by other persons holding under the *sadar malguzar* and possessing an heritable and transferable property therein or an hereditary right of occupancy subject to the payment of a fixed rent, or of a rent determinable by a fixed principle, if the title of the said *sadar malguzar* to engage for the revenue be upheld, and generally in cases wherein the tenure of an intermediate *malguzar* or manager between ⁴[the Government] and the proprietors or hereditary occupants of the soil may be maintained, whether the Government revenue be collected from the *zamindar*, *talukdar* or other hereditary intermediate *malguzar*, or the *mahal* be farmed or held *khas*, it shall be competent to the Collector or other officer who may be employed in adjusting the *jama* to be assessed on such *mahal*, with the sanction of the Board previously obtained and subject to the orders and directions of that authority, to make a *mufassal* settlement with each of the proprietors or occupants aforesaid for the land possessed by him, and to grant such proprietors or occupants *pattas* defining the condition on which they are to hold their land, whether subordinate to the *sadar malguzar* or to the farmer or ⁵[officer of the Government] employed in the *khas* management; and in all such cases, if engagements for the Govern-

¹These words were substituted for the words "shall be competent to the Governor General in Council" by the Bengal Decentralization Act, 1915 (Ben. Act V of 1915).

²The word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

³The words "*Official Gazette*" were substituted for the words "local official Gazette" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴The words "the Crown" were substituted for the words "the Government" by para. 3 and Sch. XIV, *ibid.*, and the word "Government" was subsequently substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁵The words "officer of the Crown" were substituted for the words "officer of Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "Government" was subsequently substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

of 1822.]

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ment revenue of the *mahal* be taken from the intermediate hereditary *malguzar*, the particulars of the *mufassal* settlement, when approved by the Board, shall be endorsed on the *patta* to be granted to the *sadar malguzar*, or shall be so incorporated with the engagement taken from him as to form part of the same.

Third.—In cases in which two or more persons may possess a joint property in any village, *mahal* or parcel of land, or in the rent or produce of any village, *mahal*, or land, or in any part of such village, *mahal*, land, rent or produce, the property of such persons consisting of interests of the same kind, whether of the same extent or otherwise, as well as in cases wherein such property in any *mahal* village, land, produce or rent may be separately possessed by parties subject by prescriptive usage to common obligations, whether existing or contingent, it shall be competent to the Collector or other officer exercising the powers of Collector, subject to the orders and direction of the Board and of the ¹[State Government], either to make a joint settlement with the parties collectively or a majority of them, or with an agent appointed by them or a majority of them, or to select one or more of them to undertake the management of the *mahal* as *sadar malguzars*, due advertence being had to the wishes of all the co-parceners, and to the past custom of the village or villages comprised in the *mahal*.

Settlement where several persons hold common property subject to common obligations.

Fourth.—When it shall be determined to make a joint settlement for any village, *mahal* or parcel of land with the parties possessing therein a joint property as aforesaid, the Collector or other officer making the settlement shall give notice of his intention, by a written proclamation to be stuck up in some public place within the village, *mahal* or land, and shall require all persons possessing therein a property as aforesaid to attend, either in person, or by representative duly authorized in the matter within a reasonable period, at a stated place and time, and to declare their agreement or non-agreement to the *jama* proposed to be assessed on the village or land.

When joint settlement to be made, parties how summoned.

Fifth.—If any person or persons, when summoned as above, shall refuse, neglect or omit to attend, either in person or by representative, such person or persons shall be held to be bound by the decision of the majority of those who attend, in agreeing or disagreeing to the *jama*, and his or their interests and estate shall, unless otherwise specially allowed, be held responsible for the Government revenue, and be liable to sale in the event of any arrear accruing on account of the settlement.

Persons wilfully failing to attend when summoned, to be bound by decision of majority present.

Sixth.—If any person or persons shall attend and shall object to the *jama* proposed to be assessed, then, should a settlement be made with the other parties present, the objecting parties shall be left in the enjoyment of the same rights and interests as they would enjoy in the event of the *mahal* being

Treatment of parceners not joining in settlement.

¹See foot-note 1 on page 212, *ante*,

(Section 10.)

farmed or held *khas* : and, in so far as regards the lands to which such rights and interests attach, the other parceners, if their engagements be extended thereto, shall be considered farmers of the Government revenue to hold the same under leases of such term as may be determined and agreed upon under the general rules applicable to lands for which the proprietors may refuse to engage.

Seventh.—When any *mahal* or portion of a *mahal*, held by a number of cultivating proprietors in *pattidari* or *bhaiya chara* tenure or the like, shall be let in farm or held *khas*, the rent demandable from the proprietors of such *mahal* or portion of *mahal*, on account of the land occupied and cultivated by themselves, shall be adjusted by the rates payable by *raiya*ts or other resident cultivators not having an heritable and transferable property in the soil, for lands of a similar description in the same or in the adjoining villages, with a deduction of five per cent., on account of *malikana*, or such other rate, not being less than five per cent., as ¹[the State Government] may determine.

Eighth.—When it shall be determined to make a settlement of a *mahal* of the above description with one or more of the parceners selected to manage, collect and account for the public revenue as *sadar malguzar*, then and in that case the interests of the non-engaging parceners shall not be held answerable for the default of the *sadar malguzars*, save and except in so far as may be specifically provided :

Such parceners shall, until regularly separated, continue to hold their lands as subordinate proprietors, subject to the payment of rent or revenue to the *sadar malguzar* at the rates and in the mode heretofore in use, excepting in so far as that usage may be affected by the determination ²[of the State Government] in regard to the distribution of the net rent or profit derived from the limitation of the Government demand, or by the rules now in force or hereafter to be enacted, for vesting the *sadar malguzars* with specific powers over the subordinate tenants in the collection of the rent or revenue demandable from them.

The responsibility attaching to the persons selected as *sadar malguzars* and the conditions under which they are to hold that title of management will in each case be specifically declared at or after the time when the settlement is confirmed.

The conditions and limitations under which the subordinate proprietors shall be admitted to separate engagements will also be similarly declared.

¹The words "the Provincial Government" were substituted for the word "Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was subsequently substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

²The words "of the Provincial Government" were substituted for the words "of Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was subsequently substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

Rates of
rent of
cultivating
proprietors
of
lands of
which
revenue
collected
khas or
farmed.

Liability
for default
of non-
engaging
parceners
when
settlement
of *mahal*
made with
one or
more of
them as
sadar
malguzar.

The Bengal Land-revenue Settlement Regulation, 1822. 223
of 1822.]

(Section II.)

Ninth.—Provided further that, in all cases wherein different parcels of land belonging to any *mahal* may be separately owned and occupied by different proprietors or by different bodies of proprietors, it shall be competent to the '[Board] of Revenue or other authority exercising the powers of that Board to cause a separate settlement to be made for the land owned and occupied by each proprietor or by each body of proprietors, and each parcel of land for which a separate settlement may be so made shall be held exclusively responsible for the revenue assessed upon it :

Parcels separately owned and occupied may be separately settled.

Provided also that, if the several parties possessing a joint property or separate properties subject to a common obligation as aforesaid, or any of them, shall apply to a Collector or other officer making or revising a settlement to have separate possession of their several share or shares in such joint property, or to be admitted to separate engagements, it shall be competent to such Collector or other officer, with the sanction of the Board or other authority to which he may be subordinate, to make a partition of the property among the different parties according to their respective interests, and to make a separate settlement with each of them or with such as may desire to enter into separate engagements.

Power to partition and to settle separately with each proprietor.

Tenth.—In all cases wherein any proprietors may be excluded from engagements the Collector shall be careful to let it be known that all persons possessing a property in the *mahal* are entitled to have their names recorded in the *rubakari* of settlement, with the amount or rate of the assessment demandable from each.

Proprietors excluded from engagements may have their names registered.

11. *First.*—The Collector's proceedings in forming the registry above directed shall be founded on the basis of actual possession, and that officer shall, in every instance, be careful to record the precise nature of the authority on which the entries in his books may be made.

Collectors forming such registry to proceed on basis of actual possession.

In conformity with the above principle it shall be competent to the Collectors or other officers when making or revising settlements, or otherwise deputed to investigate and determine the circumstances of any *mahal*, and the nature of the tenures connected with it, to correct the errors or omissions of former settlements by admitting to engagements or entering on the public records the names of the persons found in the *bona fide* possession of land or in the receipt of rent under a proprietary title ; and in such cases the Collector will hold an official proceeding, explaining fully the grounds on which he may act.

¹This word was substituted for the word "Boards" by the Amending Act, 1905 (I of 1905).

(Section 12.)

In estates held under *pattidari*, *bhaiya chara* or like tenure Collectors may re-allot revenue and charges payable by several parceners;

12. *First*.—In cases in which the proportion of the Government *jama* and village-expenses payable by each proprietor and by each body of proprietors comprised in the several *pattis*, *behris* and other divisions of an estate held under *pattidari* or *bhaiya chara* tenure or the like may have been originally fixed on a measurement of the lands occupied by each, with reference to the quantity in cultivation, and may be liable by the usage of the country to periodical adjustment on the same principle, if the Collector or other officer making or revising the settlement shall be satisfied, by examination of the *patwaris*' accounts or otherwise, that the contributions paid by any proprietor, or body of proprietors as aforesaid are materially in excess of the amount justly demandable from them, it shall be competent to him, with the previous sanction of the Board, to cause a new distribution to be made of the revenue and charges payable by each with reference to the above principle, and to such resolutions as ¹[the State Government] may have passed relative to the apportionment of the net rent or profits arising out of the limitation of the Government demand, and in the performance of this duty to employ the *kanungo*, and such person or persons as he may judge it advisable to appoint, and to settle the *jama* payable by the different parties according to the award of such person or persons, or otherwise as shall appear to be just and equitable.

and in certain cases may make fresh partition of land.

Second.—In like manner, in cases in which the several proprietors shall be entitled not only to an adjustment from time to time of the *jama* payable on account of the lands occupied by them, but likewise to a periodical partition of the lands of the village, with reference to the share recorded as belonging to each, it shall be competent to the Collector to cause a fresh partition of the lands and adjustment of the *jama* to be made as above prescribed, and at the same time to fix and declare the period from which the arrangement as finally settled is to have effect, and to adjust the claims of the parties relative to revenue intermediately paid by them, as may appear equitable :

Provided, however, that no such partition or adjustment shall be final until confirmed by the Board * * * or other authority exercising the powers of the Board :

Cases in which parties affected by Collector's decision may contest it in Court.

Provided also that, if any parties shall dispute the existence of the usage under which the partition of the lands shall have been made, and shall claim to be restored to possession of the lands which the Collector may have transferred to another, or shall consider himself entitled to the benefit of a new partition of the lands comprised in the *mahal* to which he may belong, in any case in which the Collector may have refused to order it,

¹The words "the Provincial Government" were substituted for the word "Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²The words "of Commissioners" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

(Sections 13, 14.)

it shall be competent to the said party to bring a regular suit in the *Zila* Court against the person or persons to whom the land may have been transferred, or the person or persons who may resist the partition, to try the justness of the Collector's decision ; but, if the existence of the usage shall be admitted or established, it shall not be competent to the Courts of Judicature to question the accuracy of the partition of the land or adjustment of the *jama*.

On what points revenue-officer's decision conclusive.

and, whenever the decision of a Collector for the partition of any land shall be set aside, it will of course belong to the Revenue authorities to re-adjust the *jama* with reference to the interests of the parties as defined and settled by the final decision of the Courts of Judicature, and to the conditions of the tenure, and to any general or special resolution of ¹[the State Government] relative to the distribution of the net rent or profit arising out of the limitation of the public assessment.

13. Collectors and other officers exercising the powers of Collectors shall not, unless where specially authorised in the manner prescribed in this or some other ²[law], do any act tending to disturb possession, but shall leave the *Adalat* to investigate in a regular suit all claims of persons not in possession but deeming themselves entitled to be so.

Collectors not to disturb possession unless specially authorized.

14. First.—Collectors making or revising settlements shall, in cases in which any dispute may exist in regard to the nature of the tenure of any person occupying the soil, be competent to declare in an official proceeding, to be incorporated in the *rubakari* of settlement, the nature and extent of the interests actually possessed by such occupant, referring to the denomination heretofore applied to him only as one means of proof in regard to the nature of the interest, but stating at length, with specification of any examination he may take for his satisfaction, the grounds of his determination ;

Collectors making or revising settlements may declare nature and extent of interests of persons occupying land.

so also in cases of dispute regarding the extent of the interest belonging to any sharer in a village or villages held under *pattidari*, *bhaiya chara* or the like tenure, such sharer having actual possession of a portion of such village or villages, or being in the actual receipt as proprietor of a share of the joint profits of the land, it shall be competent to the Collector to decide the point in the first instance in his *rubakari* of settlement, and to enforce his decision, leaving the party who may deem himself aggrieved to seek redress by a regular suit in the Court to try the right ;

but nothing herein contained shall be construed to authorise the Court to interfere with the decision of the Collector in regard to the amount or proportion of *jama* to be assessed on any

¹See foot-note 1 on page 224, *ante*.

²This word was substituted for the word "Regulation" by the Amending Act, 1903 (I of 1903).

(Section 14.)

parcel of land, or in respect to the quantity and description of land, to be assigned in partition to the holder of any specific share of a joint estate.

Second.—The above rule shall not be construed to empower Collectors, unless otherwise authorized, to take cognizance of any claim to receive a larger portion of the common profits than the claimant has hitherto enjoyed, or to hold a larger portion of the village or villages than he has hitherto occupied.

Third.—The decisions passed by the Collectors under the above powers, if not altered or annulled by the Board or ¹[by the State Government], shall be maintained by the Courts, unless on investigation in a regular suit it shall appear that the possession held under such a decision is wrongful; and nothing herein contained shall be understood to authorise any Court to interfere with the decision of the Revenue-authorities relative to the *jama* to be assessed on any *mahal* or portion of a *mahal*, or to the extent and description of lands belonging to any *mahal* that may be assigned on the partition of the same to the several parceners concerned.

Fourth.—If any person shall complain to a Collector or other officer making or revising the settlement of any *mahal* that he has been wrongfully dispossessed from any lands, premises, crops, orchards, pasture-grounds, fisheries, wells, water-courses, tanks, reservoirs or the like, within such *mahal*, or of the rents, produce or profits of such lands, premises, etc., the like as aforesaid, or that he has been wrongfully disturbed in the possession thereof, it shall be competent to the Collector or other officer aforesaid to inquire into the matter, and, if the party so complaining shall appear to have been in possession in the year preceding that in which the complaint is brought, and there shall otherwise be reason to believe that he has been violently or wrongfully dispossessed or disturbed, it shall be competent to the Collector to restore or confirm him, recording the grounds of his determination in a *rubakari*; and the opposite party shall in such case be left to bring a regular suit in Court to try the question of right.

In like manner, should a Collector or other officer as aforesaid find that there exist in any *mahal* of which he may be making or revising the settlement any disputes, relative to the possession of lands, premises or the like which it may be expedient to adjust, it shall be competent to the Collector or other officer aforesaid to pass a decision determining the point of possession, leaving the question of right, if further disputed, to be settled by the result of a regular suit in the *Adalat*.

¹The words "by the Provincial Government" were substituted for the words "by Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was subsequently substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

Cogni-
zance of
claims to
larger
profits, or
larger
share of
village,
than
hitherto.
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Revenue-
officers.

Bar to
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Courts.

Cogni-
zance by
Collectors
of com-
plaints of
wrongful
dispos-
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Adjust-
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disputes as
to posses-
sion.

of 1822.]

(Section 15.)

Fifth.—The above provisions will be held to apply to all cases in which a *zamindar* or under-tenant, whether farmer or *raiyyat*, having by special deed or prescriptive title a right of occupancy, shall have been wrongfully ousted from the occupancy of lands held and cultivated by him in the preceding year, or in which the rents and profits of any land which were received by such dispossessed party in the preceding year shall be withheld from him without a legal award, or a voluntary act of the party involving the transfer, renunciation or relinquishment of such rents and profits.

Cases to which foregoing provisions apply.

But the above rule shall not apply to any case in which the complaining party may have executed any deed purporting to be a relinquishment of possession, unless it shall have been established by some judicial proceeding that such deed was extorted by force and terror, nor to any cases wherein the complainant shall have in any way lost or relinquished possession previously to the commencement of the year preceding that in which the complaint may be preferred.

15. In the settlement of any resumed *mahal* held or pretended to be held under *sanads* from the ruling power, or from the *amils* or other ¹[officers of the Government], whether such lands shall have been heretofore subject to the payment of revenue or otherwise, it shall be competent to the Collector or other officer making the settlement to hear, try and determine all claims to the property and possession of the land comprising such *mahal*, or the rents or produce thereof, anything in the existing Regulations notwithstanding, and subject to the orders and direction of the Board of Revenue or other authority exercising the powers of that Board to give possession to, and conclude a settlement with, the party who may appear to have the best title, leaving other claimants to establish their claims by a regular suit in the *Zila* ²* * Court, by which ³* * * all decisions passed by the Revenue-authorities under the section may, on such suit being fully heard, sued and, determined, and not otherwise, be revised, annulled or altered.

In settling resumed *mahals* Collectors may take cognizance of claims to property therein;

and may give possession to parties appearing to have best title.

The above rule shall not extend to lands held free of assessment under grants made by or at the request of the proprietors themselves or their representatives, the settlement of which shall ordinarily be made with the parties in possession, if willing to engage on adequate terms.

Limitation of rules.

¹The words "officers of the Crown" were substituted for the words "officers of the Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "Government" was subsequently substituted for the word "Crown" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

²The words "or Provincial" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

³The words "according to the value of the interest at stake," were repealed, *ibid*.

(Sections 16, 17.)

Power to grant to Collectors making or revising settlements special authority to take cognizance of claims to property and possession of land.

16. It shall be competent to the ¹[State Government] to grant to a Collector making or revising the settlement of any *mahal*, whether the same may have been held by a *lakhiraj* tenure resumed, or being *malguzari* may have become open to re-settlement in ordinary course, special authority to hear, try and determine as above all claims to the property and possession of the lands lying within such *mahal* or the rent or produce thereof, and to give possession to the party who may appear to have the best title, subject to the orders and direction of the Board and further subject, as above, to the revision of the *Zila* ²* * * Court on a regular suit :

Provided also that, whenever special authority may be given to any Collector as aforesaid, notice of the order of Government shall be published by a proclamation within the *mahals* to which the authority so given may extend ; and it shall be the duty of the Collectors and the ³[Board] to see that such proclamation is duly made.

But no decision passed by a Collector under this or any other section whereby such notification is required shall be disturbed by any Court of Judicature, otherwise than after a full and regular investigation on merits, on the plea that proclamation was not made.

Power to take cognizance of claims to property in lands held *lakhiraj*, or at a *mukarrari jama*, under valid tenures, and to settle with proprietors on behalf of *lakhirajdar* or *mukarraridar*.

17. It shall be competent to Collectors and other officers engaged in making or revising the settlement of any *pargana*, *mauza* or other local division, on the application of persons claiming a right of property in lands held free of assessment, or at a *mukarrari jama*, under unquestioned grants from the ruling power, or from the *amils* or other ⁴[officers of the Government], and situate within or adjoining to such *pargana*, *mauza* or other local division, to receive, try and determine the claim ; and, if satisfied that the applicants do possess or are entitled to possess an hereditary and transferable property in the land or the produce or rent thereof, the Collector or other officer, with the ⁵[sanction of the State⁶ Government] previously obtained, shall be authorised to conclude a settlement with them on behalf of the *lakhirajdar* or *mukarraridar* for such period as the ¹[State Government] may direct, and

¹See foot-note 1 on page 212, *ante*.

²The words "or Provincial" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

³This word was substituted for the word "Boards" by the Amending Act, 1903 (I of 1903).

⁴The words "officers of the Crown" were substituted for the words "officers of Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "Government" was subsequently substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁵These words were substituted for the words "sanction of Government" by para. 3 and Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "Government" was subsequently substituted for the word "Crown" by para. 4(1) of the Adaptation of Laws Order, 1950.

⁶See foot-note 2 on page 220, *ante*.

of 1822.]

(Sections 18, 19.)

shall grant to each of the said proprietors *pattas* defining the conditions on which they are to hold their lands subordinate to the *lakhirajdar* or *mukarraridar*.

It shall futher be competent to the Collector, under the orders of the Board, ¹* * to fix and declare the amount of *malikana* or other proprietary allowance to be paid by such *lakhirajdars* or *mukarraridars* to the said proprietors, in the event of their being divested of the occupancy and management of their lands :

Provided, however, that either party who may be dissatisfied with the decision of the Collector as to the question of the right of property shall be at liberty to contest the same in a regular suit in the *Adalat* ; but the Court shall not interfere to alter the terms on which the settlement may have been made by the Collector with proprietors, or the amount of *malikana* granted to such persons.

18. The Collector shall in cases of doubt be the Judge of the question of jurisdiction, subject to the orders of the Board and ²[of the State Government] ; and the Courts of Judicature shall not disturb possession given by the Collector except on a regular suit, and on a decision as to the right.

Collectors to be Judges of question of jurisdiction.

19. First.—It shall be competent to Collectors, when prosecuting the above enquiries or hearing and trying the above suits, or otherwise when authorised in that behalf by the Board to which they may be subordinate, to require all *sadar malguzars* and other persons owning, occupying, managing or cultivating any lands within or in the vicinity of the *mahal* to which their inquiries may extend, or gathering or disposing of the produce thereof, or collecting, enjoying or appropriating any rent or revenue derived therefrom, as well as the *gumashtas* or other agents employed by such persons in the management or cultivation of the land, or in the collection of the rent, produce or revenue thereof, to attend and produce all accounts or other papers which they may respectively possess relative to such lands, produce, rent or revenue, and to examine the said persons on oath, or *halafnama* to the truth of the accounts produced, or any other matter relating to such accounts, or regarding the lands, produce, rent or revenue of the *mahal* or the rights and interests attaching to such lands, produce, rent or revenue :

Collectors authorized to summon witnesses and require production of accounts.

Provided, however, that no person shall be compelled to answer on oath or solemn declaration any interrogation regarding matters wherein he may have an immediate personal

¹The words "of Commissioners" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

²The words "of the Provincial Government" were substituted for the words "of Government" by para. 3 and Sch. XIV of the Government of India Adaptation of Indian Laws) Order, 1937, and the word "State" was subsequently substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

(Section 20.)

interest in concealing the truth, or in uttering what is false, not being an interest arising out of fear, favour or reward, or any corrupt bargain or agreement with another party.

Rules of Regulation II, 1819, applied to process issued by Collectors;

also to *patwaris* and others summoned or examined

Second.—The rules contained in section 11, Regulation II, 1819¹, relative to the mode of serving process on persons who may be required to attend and produce accounts under the provisions of that Regulation, shall be and be held applicable to processes issued by Collectors or other officers under the rules contained in this Regulation.

In like manner the provision of section 12 of the said Regulation shall be applicable to all *patwaris*, *gumashtas* or other persons by whom the accounts of any lands, regarding which the said inquiries may have been instituted, may be kept, and who, after being duly summoned as aforesaid, may neglect or omit to produce any of the accounts required from them, or to give their evidence regarding them, or who may deliberately give a false deposition on oath or solemn declaration, when summoned and examined as aforesaid, or who may alter, fabricate, falsify or mutilate the accounts which they may be required to produce :

Powers of Collectors,

Provided further that Collector and other officers employed in the settlement of the land-revenue, or in any of the inquiries specified in this Regulation, shall be vested with all the powers and authority which are or may be lawfully exercised by Collectors in cases depending before them under Regulation II, 1819¹; and the rules contained in clause third, ²sections 13, 14 and 19 of the said Regulation shall be and be held applicable to all persons who may be summoned by any Collector or other officer aforesaid, or who may resist the process of a Collector issued under the rules of this Regulation, or who may refuse to take an oath or subscribe a solemn declaration when required, or who may deliberately give a false deposition on oath or under a solemn declaration taken instead of an oath, or may cause or procure another to do so.

Rules applied to other persons upon whom process may be issued.

Powers ordinarily vested in Collectors making or revising settlements.

³20. *First.*—The powers specified in sections 11, 12, 14, 16, 17, 18 and 19 of this Regulation shall be ordinarily exercised by Collectors when employed in making or revising settlements of the land-revenue, and shall extend to all the lands comprised in the *pargana* in which he may be so employed ; but it shall be

¹Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.

²*Sic* in Clarke.

³So much of sec. 20 and the following sections as applies to suits for rents, to complaints of excessive demand or undue exaction of rent, or of the non-delivery of *pattas* or receipts, to suits against agents for money or accounts, or to any other suits or complaints arising out of disputes between landholders or farmers and their under-tenants respecting the rent and occupancy of land, has been repealed by the Bengal Rent Act, 1859 (X of 1859), wherever that Act extended. The matter printed in italics in this section seems to be obsolete in consequence of that repeal.

(Section 20.)

competent to ¹[the State² Government, by notification in the ³Official Gazette], to be publicly proclaimed in the district, to restrict the authority of Collectors and other officers making settlements in such manner and to such extent as ⁴[it] may from time to time judge expedient.

In like manner it shall be competent to ⁵[the State² Government] to vest such Collectors as may from time to time be judged fit with a special authority to receive, try and determine in the first instance, subject to a regular suit in the Adalat as above provided, all or any of the questions of the nature specified in the aforesaid sections, though the said Collectors may not be engaged in making or revising a settlement of the land-revenue,

and to vest in such of the Collectors as may be thought proper authority (either generally or within such limits as may be from time to time determined) to receive, try and determine by summary process all suits for rent which may be preferred by zamindars, talukdars or other sadar malguzars or farmers of land; or by any person in their behalf, against any dependent talukdar, zamindar, under-renter, raiyat or other under-tenant of whatever denomination, as well as all applications by raiyats and the under-tenants contesting the demand of a sadar malguzar or farmer;

and all complaints preferred by raiyats or other under-tenants of whatever description, against landholders or farmers of land, or their respective agents or representatives, on account of excessive demand or undue exaction of rent, whethen levied by distraint or otherwise, as well as all suits relative to the adjustment of accounts between landholders and farmers of land or under-tenants of whatever description, with their sureties, or with any agents or persons employed by them in the management of land, or the collection or payment of the rent of land, whethen malguzari or lakhiraj, or with the rent of orchards, pasture-grounds and fisheries, commonly denominated phalkar, bankar and jalkar, or with any other asset of the land-revenue not included in the sair abolished, together with all complaints of the non-delivery of pattas when demandable under the Regulations, or complaints of the

¹The words "the Government, by an order in Council," in the original text, are to read as if the words "the Local Government, by notification in the local official Gazette" were substituted therefor—see the Amending Act, 1903 (I of 1903).

²See foot-note 2 on page 220, *ante*.

³The words "Official Gazette" were substituted for the words "local official Gazette," by paragraph 4(I) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴The word "he" in the original text is to be read as if the word "it" was substituted therefor—see the Amending Act, 1903 (I of 1903).

⁵The word "Government" in the original text, is to be read as if the words "the Local Government" were substituted therefor—see the Amending Act, 1903 (I of 1903).

⁶The matter printed in italics seems to be obsolete—see foot-note 3 on page 230, *ante*.

(Section 21.)

*prescribed receipts not being given for actual payment of rent, and generally complaints of any deviation from the Regulations, or from the established usage of the country, relative to the matters aforesaid, or any violation of subsisting engagements in disputes respecting the rent and occupancy of land between landholders or farmers of land and their under-tenants of whatever denomination.*¹

Appoint-
ment of
Collectors
to dis-
charge
above
duties,
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notified.

Second.—The appointment of the Collector to the discharge of the above duties, and the extent of the jurisdiction to be assigned to him, shall be notified by proclamation in the district, after such manner as the ²[State Government] may direct ;

and, after the publication of notice, all summary suits, actions, applications and complaints of the above nature, and referring to lands or the rents, produce or accessions of land lying within the jurisdiction assigned to the Collector as above, which may be preferred in the Zila ³* * Adalat by any sadar malguzar, zamindar, talukdar, farmer, raiyat or other proprietor or under-tenant of land, shall immediately, on being received, be referred for trial to the Collector to whom also summary suits depending at the time shall be transferred:

Provided also that in such cases parties having suits or complaints to prefer, of which the cognizance may be vested as above in the Collector, shall be at liberty to prefer them to that officer in the first instance.¹

It shall in like manner be competent to the ²[State Government] to fix, ⁴[by notification in the ⁵[Official Gazette], the period at which the special powers given as above to a Collector, and the authority to be ordinarily exercised by those officers on the occasion of making settlements, shall cease and determine.

Limita-
tion of
time for
preferring
complaints
specified.

Third.—No complaint or application of the nature specified in the preceding clauses shall be received by a Collector under the rules of this Regulation, unless the plaint or application shall have been preferred within the period of one year after the cause of action shall have arisen.¹

Rules for
guidance of
Collectors;
their
powers.

21. In summary suits for rent and the like, wherein special rules have been prescribed for regulating the process of the Courts, the Collectors shall be guided by the same rules, and shall exercise the same powers and authority as are or may be lawfully exercised by the Zila and City Judges.¹

¹The matter printed in italics seems to be obsolete—see foot-note 3 on page 230, *ante*.

²See foot-note 1 on page 212, *ante*.

³The words "or city," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

⁴The words "by an Order in Council," in the original text, are to be read as if the words "by notification in the local official Gazette" were substituted therefor—see the Amending Act, 1903 (I of 1903).

⁵The words "Official Gazette" were substituted for the words "local official Gazette" by paragraph 4(I) of the Government of India (Adaptation of Indian Laws) Order, 1937.

The Bengal Land-revenue Settlement Regulation, 1822. 233
of 1822.]

(Sections 22, 23.)

In other cases falling under their cognizance according to the provisions of this Regulation, the ordinary process for securing the attendance of the defendant or party otherwise impleaded shall be to issue a notice reciting the matter, and requiring the defendant or other party to attend in person, or by representative, at such time and place as may be made choice of by the Collector for conducting the investigation ;

should any party fail to attend after being served with a notice of the above description, or should the return of the *nazir* or person employed to serve the notice be, that after diligent search the party or parties cannot be found, proclamation shall be made in writing, to be stuck up at or near the ordinary residence of the party, stating that, after 15 days from the date of publishing the same, the case will be liable to be brought up for trial and judgment ; and any party implicated, who, having been served with the notice above described, shall fail to attend or who shall continue to absent himself, will be as much bound by the judgment that may be passed as if he or they had been in attendance to plead.

22. [Extension of ss. 18 and 19 of Reg. VIII of 1819.]—
Rep. by the Bengal Rent Act, 1859 (X of 1859).

23. First.—It is hereby declared and enacted that, in so far as concerns the summoning and examination of witnesses, the penalties for false testimony, for resistance of process, contempts and all other similar matters connected with cases under cognizance before the Collectors of land-revenue, or other officer, by virtue of the powers vested in them by this Regulation or any ¹[other law] whereby Collectors are vested with judicial powers, their *cutcherry* or office for the time being shall be deemed and held to be a Court of Civil Judicature.

Collector's
cutcherry
held a Civil
Court.

Second.—Provided also that the regular suits which may be brought to contest decisions passed by Collectors under the powers vested in them by sections 11, 12, 14, 15, 16, 17, 18, 19 and 20 shall be of the nature of an appeal to Court in its regular jurisdiction from a summary award. It shall not therefore be necessary for the Collector or other officer of Government to be a party in the action.

Suits to
contest
Collector's
decisions
held to be
appeals
from sum-
mary
awards.

Third.—Collectors of the land-revenue are hereby empowered to execute all awards made by them under the rules of this Regulation, in cases wherein a specific sum of money shall be adjudged to be due, or any costs or damages be awarded ; the Collector decreeing the same shall proceed to levy the amount

Collectors
authorised
to execute
their
awards.

¹These words were substituted for the words "other Regulation" by the Amending Act, 1903 (I of 1903).

(Section 24.)

for the party in whose favour it may be adjudged by the process in use for the recovery of arrears of the Government revenue :

Provided, however, that he shall not sell any lands, houses or other real property in satisfaction of any judgment passed in favour of any individual on a summary inquiry.¹

In cases wherein possession of lands, houses, water-courses or the like may be adjudged, it may and shall be lawful for the Collector making the award to deliver over possession in the same manner and with the same powers in regard to all contempts, resistance and the like as are or may be lawfully exercised by the Courts in giving possession to an auction-purchaser; and the Zila ²* * Adalats shall support the Collectors in the exercise of the above power, and shall give effect to any orders passed by them in pursuance of it in the like manner as if the same had been passed by themselves.

Collectors are further hereby empowered to place one or more peons, *mirdahas*, *savars* or the like to aid in the maintenance of possession for the party to whom it may be awarded, in case of his deeming such a measure necessary or expedient.

Collectors
authorized
to depute
officers to
make
inquiries
prepara-
tory to
settle-
ment.

24. First.—It shall and may be lawful for a Collector or other officer exercising the powers of Collector preparatory to making or revising a settlement as aforesaid, to depute any *tahsildar*, *kanungo*, *amin* or other fixed or temporary officer to any village or *mahal*, whether the same be managed by a *zamindar* or farmer or be held *khas*, to inquire into the various matters which such Collector or other officer is required or empowered to investigate, in order to form a settlement in the mode prescribed by this Regulation.

Any such ³* * officer so deputed as above shall be deemed to be vested with the power of summoning and examining *patwaris*, *gumashtas* or other persons by whom the accounts of the village or *mahal* may be kept, in the same manner and with the same powers as is provided for officers deputed under section 25, Regulation XII, 1817.⁴

Furthermore, in case the Collector or other officer may so prescribe the said *tahsildar* or other person shall be empowered to make a measurement of the village or *mahal* into which they may be deputed, and to summon any *mukaddams*, *padhans*,

¹So much of cl. 3 of sec. 25 as prohibits the Collectors from selling land in satisfaction of summary awards for arrears of rent which may have accrued thereon was repealed by Act VIII of 1835, sec. 1.

²The words "or city," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

³The word "Native" was omitted by the para. 3 and the Sixth Schedule of the Adaptation of Laws Order, 1950.

⁴The Bengal Patwaris Regulation, 1817.

of 1822,]

(Sections 25—27.)

rai-yats or other residents, and to call upon them to point out the boundaries of such village or *mahal*, and to furnish information as to all matters relating to the land and the rights and interest attaching thereto; and any person contumaciously withholding information from an officer deputed as aforesaid shall be liable, on the same being established to the Collector's satisfaction, to the same penalty as is prescribed for *patwaris* refusing to attend or give evidence.

Second.—Provided also that any person who may by force or threats obstruct or resist the execution of any legal process, requisition or order of a Collector or other Revenue-officer shall, in addition to the penalties prescribed by ¹[any other law] for such act, be liable to a fine not exceeding two hundred rupees, or to imprisonment in the *Diwani* jail for a period not exceeding two months; the said fine or other penalty to be adjudged by the Collector after proceeding duly held and recorded, and the sentence to be immediately reported to the Board to which he may be subject.

Punish-
ment of
resistance
or obs-
truction of
process or
order of
Collector.

Third.—Provided further that all police-officers shall aid and support the execution of all process and orders issued by a Collector or other officer aforesaid, on the responsibility of the officer issuing or executing the same; and, if any affray or breach of the peace shall occur in consequence of any resistance or obstruction being made, or attempted to be made, to the legal process or order of a Collector or other Revenue-officer, the parties resisting or obstructing such process or order shall be punishable for the affray or breach of the peace, and the Revenue-officer shall not be liable to any criminal prosecution on that account.

Police-
officers to
aid exe-
cution of
process
and orders
of
Collectors.

25. [*Employment of Vakils or Agents by parties in suits before Collectors.*].—Rep. by the *Pleaders, Mukhtars and Revenue Agents Act, 1865 (XX of 1865)*.

26. No other pleadings shall be required from the parties in ²[suits the cognisance of which is hereby vested in Collectors] than a plaint and answer:

Pleadings
required.

Provided that, if the parties should at any time wish to file an amended plaint or an amended answer, or any explanatory motion, such subsidiary pleadings shall be received.

27. [*Stamped paper to be used.*].—Rep. by the *Repealing Act, 1876 (XII of 1876)*.

¹These words were substituted for the words "the existing Regulations" by the Amending Act, 1903 (I of 1903).

²These words were substituted for the words "such suits" by the Amending Act, 1903 (I of 1903).

(Sections 28, 29.)

Collectors may try and determine suits in any part of their districts.

28. It shall be competent to the Collectors to hear and determine such suits in whatever part of the district they may occasionally be or reside :

Provided that every hearing and decision be in public *cut-cherry* or in some other place open to the public, and in the presence of the parties or of their constituted agents or *vakils*, if in attendance.

Appeal to Board.

29. *First.*—The decisions of the Collectors on all such suits shall be appealable to the Board of Revenue or other authority exercising the powers of that Board.

Procedure on such appeals.

The petition of appeal shall be presented either to the Collector or to the Board, at the option of the party ¹* *

* ; ²* * * ³* * the Board shall not be required in ordinary cases to go into a regular investigation of the merits, but shall be authorized to dismiss the appeal without further investigation, in all cases in which, on a consideration of the final *rubakari* of the Collector, they may not see ground to consider the decision of that officer to be unjust, erroneous or doubtful, or his proceedings in the case irregular or imperfect :

When Board may direct new trial or interpose to correct neglect or delay.

* * in all cases in which the Collector may dismiss the suit for non-attendance, or on some other ground of default; without an investigation of the merits of the case, it shall be competent to the Board to direct a new trial, and, in cases in which he may neglect or delay the investigation or decision of a suit without sufficient cause, it shall be competent to the Board to interfere, and to cause the Collector to proceed upon the inquiry into and determination of it.

Pleadings required in appeals to Board.

Second.—No pleadings, except the petition of appeal, shall be required in such appeals, nor shall any fees be taken by the Board on the exhibits originally filed, or on any further documents which the Board may think it necessary to call for.

No *Mukhtarnama* required for same agents re-employed.

Third.—If the parties choose to employ in the pleading of such appeals the same agents or *vakils* who were previously employed by them in the original suit, no further *mukhtarnama* or *vakalatnama* shall be required of them.

Respondent to receive notice, but not required to appear.

Fourth.—The respondent shall receive notice of the appeal, but shall not be compelled to appear in person or by *vakil* ; and the appeal shall be decided on the merits of the case, notwithstanding his absence, in the same manner as if he had attended.

¹The words "and shall be written on stamped paper of the value of two rupees," which were repealed by the Repealing Act, 1876 (XII of 1876), are omitted.

²Words as to limitation, which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

³The words "Provided also that" were repealed, *ibid.*

of 1822.]

(Sections 30, 31.)

Fifth.—The decision of the Board shall be final in as far as concerns the results of the summary inquiry of the Collector

Boards' decision how far final.

Sixth.—Any person, however, dissatisfied with the summary judgment of the Collector or the Board, and desirous of a more full and formal decision shall be at liberty to prefer a regular suit to try the merits of the case in the Zila or other similar or superior Court in which it may be cognizable.

But decision of Board and Collector may be contested by regular suit.

In such cases the summary judgment of the Collector, if not reversed or stayed by the Board, shall be carried into effect notwithstanding the institution of the regular suit.

30. All persons having claims or complaints to perfer of the nature of those made cognizable by Collectors under the provisions of this Regulation, and not wishing to avail themselves of the summary process authorized in that Court shall be at liberty to institute their claims or complaints, in the first instance, by a regular suit before the local Munsif, or in the zila ¹* * * * Adalat ²* * *

Parties having claims cognizable by Collectors, and not wishing summary trial may in first instance bring regular suit.

according as the suit may be cognizable in these Courts respectively ⁴* * *

31. First.—Whenever a regular suit may be instituted in a Civil Court, with a view to set aside or alter a summary judgment passed by a Collector the proceedings held on the summary inquiry shall be called for by precept from the Court, and filed on the record of the case.

On appeal against Collector's decision his proceedings to be on record. No such appeal cognizable by, or referable to, any Munsif.

Second.—⁵* * * all ⁶* * * Munsifs shall, in cases tried by them, be held and bound by the decisions passed, and records prepared, by Collectors or other Revenue-officers under the provisions of this Regulation, unless the same shall have been rescinded or altered by the Board or by the zila or other similar or superior Court, on a regular suit.

¹The words "and shall be rendered in a Persion *rubakari*, written on stamped paper of the value of ten rupees" have been omitted: the word "Persian" was repealed by the Repealing Act, 1874 (XVI of 1874), and the remaining words were repealed by the Repealing Act, 1876 (XII of 1876).

²The words "or City," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

³The words "or Provincial Court of the Division," were repealed, *ibid*.

⁴The words "under the general Regulations for the administration of civil justice," were repealed, *ibid*.

⁵The words "Provided also that" were omitted as having been repealed by the Amending Act, 1903 (I of 1903), and the words "no such suit shall be cognizable by, or referable to, any register, *sadar amin* or *munsif*, and" were omitted as having been repealed partly by Act XXV of 1837 and partly by the Repealing Act, 1874 (XVI of 1874).

⁶The words "registers, *sadar amins* and," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

(Sections 32, 33.)

Periodical
reports by
Collectors
to Boards.

32. The Collectors shall transmit to the ¹[Board] such periodical reports of the causes decided by, or depending before, them as the ¹[Board] may direct, and the ¹[Board] will also furnish ²[to the State Government] such abstracts of those reports, and such reports in the cases received and determined by them in appeal, as the ³[State Government] shall from time to time require.

Collectors
authorised
to refer
certain
cases to
arbitra-
tion.

33. First.—It shall be competent to Collectors or other officers exercising the powers of Collectors to refer to arbitration any disputes cognizable by them under the provisions of this Regulation, as well as any questions or disputes of any kind respecting land or the tenures therein, or the rights dependent thereon, that may come before them, provided the parties consent to that mode of adjustment, and, on award being made, to cause the same to be executed.

Force of
awards
passed on
such
reference.

In referring cases to arbitration under the above provision, and in their general proceedings relative to such suits, the Collector ⁴* * * shall be competent to vest in the arbitrators the same powers and authority in regard to the summoning and examination of witnesses, and the administration of oaths, and to enforce the orders passed by the arbitrators under such powers, in the same manner as the Courts of Judicature are empowered to do; and all awards made on such references shall, when confirmed by the Collector, have the same force and validity as a regular decree of the *Adalat*, and shall not be liable to be reversed or altered, unless the award shall be open to impeachment on the ground of corruption or gross partiality or shall extend beyond the authority given by the submission of the parties; and such ground of impeachment shall be established in a regular suit in the *zila* ⁵* or other superior Court wherein the case may be cognizable.

Matter of
arbitra-
ment to be
distinctly
specified
in Collec-
tor's pro-
ceedings.

Second.—In referring any dispute to arbitration, the Collector shall be careful to specify in his proceedings, and in the deed of arbitration to be executed by the parties, the precise matter submitted to the arbitrators; and, if the award first made by the arbitrators shall not include all the points submitted to

¹This word was substituted for the word "Boards" by the Amending Act, 1903 (I of 1903.)

²The words "to the Provincial Government" were substituted for the words "to Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was subsequently substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

³See foot-note 1 on page 212, *ante*.

⁴The words and figures "shall be guided by the rules contained in Regulation 16, 1793, and the other corresponding enactments and in regulation 6, 1815, in so far as the same may be applicable, and" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

⁵The word "City," which was repealed by the Amending Act, 1903 (I of 1903), is omitted.

(Section 34.)

them, or shall be otherwise incomplete, it shall be competent to the Collector again to refer the matter to them, with directions to perfect their award.

Third.—The *pargana kanungos* and *tahsildars* may be appointed arbitrators in any case referred to arbitration under the above rules ; anything in the existing Regulations notwithstanding.

Kanungos and tahsildars may be employed as arbitrators.
Power of Collectors to interfere in cases of disputed possession;

34. *First.*—When a Collector or other officer exercising any of the powers vested in Collectors by the rules of this Regulation, relative to complaints of dispossession or disturbance of the possession of lands or premises, shall learn, either by a reference from the Magistrate, or by a report from any other public officer or otherwise, that any disputes exist within the tract placed under his jurisdiction, relative to any lands, premises, crops, orchards, pasture-grounds, fisheries, wells, watercourses, tanks, reservoirs or the like, likely to terminate in a breach of the peace, it shall and may be lawful for the Collector or other officer aforesaid to require the contending parties to attend in person or by representative at a stated time and place, and, after investigating the case in the presence of the parties or their representatives, or such of them as may attend, or referring it to arbitration as above prescribed, to decide the case in the same manner as if it had been brought before him by the complaint of one of the parties :

Provided also that, if the fact of previous lawful possession cannot be ascertained, it shall be competent to the Collector, subject to the orders and direction of the Board, to decide on the question of right, and to give possession to one of the contending parties, leaving the other party to contest the decision by a regular suit in Court ; but no such decision shall be passed by any Collector until he shall have instituted a careful inquiry into the fact of possession, and the Board shall be careful to see that this restriction is observed :

and to give possession to one of the contending parties.

Provided further that in such cases it shall be competent to the Collector to attach the disputed lands, premises, etc., as aforesaid, and to appoint an officer to the management of the same, retaining in deposit the rents and produce or such portion thereof as may remain after discharging any public revenue demandable therefrom, with the charges of management, until one of the contending parties shall be placed in possession.

Collector may attach disputed lands, etc.

Second.—Whenever any Magistrates or Joint Magistrates shall have before them any suit, complaint or information relative to any dispute regarding lands, premises, crops, watercourses or the like, which may appear likely to terminate in a breach of the peace, or which it may otherwise be desirable to bring to an immediate decision, it shall be the duty of such Magistrate or Joint Magistrate, in cases in which the Collector shall be vested with the cognizance of such actions, to certify the case to that

Reference of disputes by Magistrates to Collector.

[Ben. Reg. VII of 1822.]

(Section 35.)

officer, and the Collector will then forthwith proceed to investigate and determine the case under the rules above prescribed :

Provided also that, in all cases of forcible dispossession or forcible disturbance of possession, the Collector shall invariably transmit to the Magistrate or Joint Magistrate a copy of the first proceeding held by him in the case, and also a copy of the *rubakari* containing his final award.

Collector
to en-
courage
arbitra-
tion.

Third.—The Collector shall in all such cases use every proper means for inducing the parties to refer their disputes to arbitration, in like manner as the *Diwani* Court are directed to do.

"Board of
Revenue."

35. Whenever the term "Board of Revenue" * * * may occur in this or any other Regulation, the same shall be held and considered to apply to any Board, committee or commission, and to any member of such Board, committee or commission, that may be vested by the ²[State Government] with the powers and authority of the Board of Revenue, save and except in so far as may be otherwise specially declared and provided.

Rules re-
garding
Collectors
to apply to
officer
exercising
authority
of
Collector.

In like manner, all rules in this or any other Regulation, whereby any duties or powers may be prescribed for, or vested in, Collectors shall be held and considered to be equally applicable to any officer exercising the authority of Collector under the orders or with the sanction of the ³[State Government].

¹The words "or Board of Commissioners," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

²The words "Provincial Government" were substituted for the words "Governor General in Council" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was subsequently substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

³See foot-note 1 on page, 212, *ante*.

Bengal Regulation XI of 1822

(The Bengal Government Indemnity Regulation, 1822.)¹

SHORT TITLE GIVEN

Act I of 1903.

REPEALED IN PART

Act XII of 1841.

Act XII of 1891.

Act I of 1903.

ADAPTED

...

...

...

{

- (a) The Government of India
(Adaptation of Indian Laws)
Order, 1937.
- (b) The Adaptation of Laws
Order, 1950.

(22nd November, 1822.)

A Regulation^{2} * * * for declaring Government not to be liable for any errors or irregularities in the proceedings of the Courts of Justice, and for making further provision for the conduct of the Revenue-officers in certain cases.*

1. [Preamble.]—*Rep. by the Bengal Land-revenue Sales Act, 1841 (XII of 1841).*

2. [Repeals.]—*Rep. by the Amending Act, 1903 (I of 1903).*

3 to 35.—*Rep. by the Bengal Land-revenue Sales Act, 1841 (XII of 1841).*

36. If a Collector shall at any time, being so instructed by either the Government or the Board, purchase on account of Government an estate exposed to sale for the recovery of arrears of revenue, the rules applicable to the management of ordinary *malguzari mahals* held *khas* or farmed shall be considered applicable to such estate, and also to all other estates the property of Government, according as they may be held *khas* or let in farm.

Rules for
khas
manage-
ment
applied to
purchases
by
Govern-
ment.

37. [Collector's power to punish for contempt.]—*Rep. by the Bengal Land-revenue Sales Act, 1841 (XII of 1841).*

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—Ss. 36 and 38 of this Regulation have been declared by the Laws Local Extent Act, 1874 (XV of 1874), sec. 6, to be in force throughout the former Province of Bengal except as regards the Scheduled Districts.

Ss. 36 and 38 have been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), sec. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

²The words "for modifying and explaining the existing Regulations relative to the sale of land for the recovery of arrears of revenue," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

[Ben. Reg. XI of 1822.]

(Sections 38, 39.)

Government not liable for errors of Courts.

38. It is hereby declared and enacted, that ¹[the Government] is not and shall not be held liable for any error or irregularity which may have occurred, or shall, occur, in any order, proceeding or decree of any Court of Judicature, whether a revenue or other officer of ¹[the Government] may or may not have been, or shall or shall not be, employed in giving effect to the order, proceeding or decree deemed to be erroneous or irregular.

Nor shall any officer of ¹[the Government] be held liable for anything done or suffered in conformity with an order, proceeding or decree of a Court as aforesaid : and if any person or persons shall sue ¹[the Government] or any officer of ¹[the Government] for anything done or suffered under an order, proceeding or decree of Court as aforesaid, such person or persons shall be non-suited, with costs.

The same principle is and shall be held applicable to all orders, proceedings or decrees made, held or passed by any public officer, in virtue of powers vested in him for the judicial cognizance of any pleas, suits, complaints or informations whatsoever, unless otherwise specially provided.

39. [*Saving of Ben. Reg. I of 1821.*—*Rep. by the Bengal Land-revenue Sales Act, 1841 (XII of 1841).*]

¹The words "the Crown" were substituted for the word "Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws), Order, 1937, and the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

Bengal Regulation VI of 1823.

(The Bengal Indigo Contracts Regulation, 1823.)¹

SUPPLEMENTED	...	{ Ben. Regn. V of 1830. Act X of 1836.
SHORT TITLE GIVEN	...	Act I of 1903.
REPEALED IN PART	...	Act X of 1836. Act VII of 1870. Act XVI of 1874. Act XII of 1876. Act I of 1903.
REPEALED IN PART AND AMENDED		Act XII of 1891.

(10th July, 1823.)

A Regulation for authorizing the institution of summary suits to enforce the execution of certain written engagements for the cultivation and delivery of the indigo-plant, and for declaring certain principles in regard to the same.

1. The poverty of the lower orders in India, and particularly of those employed in agriculture, occasions the general use of borrowed capital for the production of the chief articles of trade and consumption.

Preamble.

The capitalist advances his money, and sometimes the seed likewise, upon a contract to receive the produce of a defined quantity of land, either at a certain fixed price, or at rates to be subsequently determined with reference to the market price at a specified season ; and this system is understood generally to prevail in the Province of Bengal in the cultivation of the plant from which the indigo-dye is extracted.

According to the existing Regulations, if the contracting *raiya*t should fail to cultivate the land in the manner specified, or, having so cultivated the land, should sell the produce to another, or otherwise defraud his creditor, and fail to execute his contract by delivery of the stipulated article, the person with whom he has so contracted has no other remedy than a regular action for the recovery of the penalty conditioned in the agreement.

It is usual for the Courts of Justice, in decreeing such causes, to award such limited penalty as may, in each instance, appear to be a fair compensation to the person making the advances for the non-employment of his capital.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Regulation was enacted for the whole of the former Province of Bengal—see the concluding paragraph of sec. 1.

It has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), s. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), sec. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

(Section 2.)

In the absence, however, of any rule for the regulation of the discretion thus assumed, much confusion has arisen from the conflicting opinions and judgments of the several judicial officers as to the extent of penalty recoverable on agreements of this nature.

It seems reasonable, also, that the person who advances seed and capital, or capital only, for the expenses of cultivation on a defined parcel of land, should be considered to possess a lien and interest in the indigo-plant produced, on that land, when so stipulated in a written engagement between the parties and especially in cases in which such written engagement may have been duly registered * * * ; and that it should not be in the power of a *raiyat*, who has already conditioned for the delivery of the produce of his land to one person, to break the condition by a clandestine and fraudulent transfer of such produce to another.

The system at present in force provides, as above observed, no other remedy for parties injured by this dishonest practice than by a regular action in the Civil Court.

The difficulty and delay of obtaining redress by that course have not unfrequently led to acts of violence, and even to serious affrays ; and the more frequent occurrence of such affrays is to be apprehended in consequence of the eager competition which now prevails amongst the indigo-manufacturers in some parts of Bengal, arising from the unusually high price of indigo.

The Governor General in Council has in consequence judged it expedient to declare the principles on which the points above stated shall be settled, and to provide for the more prompt adjustment of disputes and enforcement of contracts of the nature above specified ; and the following rules have accordingly been passed, to take effect in the several districts comprised within the Province of Bengal from the date of their promulgation.

2. If any person shall have given advances to a *raiyat*, or other cultivator of the soil, under a written engagement, stipulating for the cultivation of indigo-plant on a portion of land of certain defined limits, and for the delivery of the produce to himself, or at a specified factory or place, such person shall be considered to have a lien or interest in the indigo-plant produced on such land, and shall be entitled to avail himself of the process hereinafter provided for the protection of his interests and for the due execution of the conditions of the contract.

When persons making advances for cultivation of indigo-plant on certain land have lien on, or interest in, its produce.

¹Portion repealed by the Amending Act, 1891 (XII of 1891), is omitted.

²The words and figures "under the provisions of Regulation 20 of 1812," which were repealed by the Repealing Act, 1876 (XII of 1876), are omitted.

of 1823.]

(Section 3.)

3. First.—If any person, who may have made advances on conditions of the nature above described, shall have just reason to believe that an individual under engagement with him is evading or is about to evade the execution of his contract, by making away with and disposing of the produce otherwise than as stipulated, or that he has engaged secretly or openly to supply the same to another, it shall be competent to such person to present a petition of complaint to the Zila ¹ * * Judge ² * * * within whose local jurisdiction the land stipulated to be cultivated with the indigo-plant may be situated, filing with the same the original deed of engagement by which the produce may be assigned and engaged to be delivered to himself or at his factory, and certifying in his petition that such deed was voluntarily and *bona fide* executed by the individual complained against.

Such person how to proceed when he has just reason to believe that raiyat will dispose of produce otherwise than stipulated.

Second.—On such petition and original deed of engagement being filed, a summons, or *talab chitthi*, shall be immediately issued through the *nazir* in the usual form, requiring the individual named in the petition to attend and answer to the complaint, either in person or by an authorized agent, within such specified period as may in each instance appear reasonable, and which period shall in no case exceed twenty days.

Summons for attendance of defendant.

Third.—The officer entrusted with the execution of the process shall also be instructed to affix a copy of the summons in the village *cutcherry* or other place of public resort, and to erect a bamboo on the specific parcel of ground on account of which the claim may have been preferred, and which it shall be the duty of the plaintiff or his agent to point out.

Summons how served;

By these means sufficient public notice of the claim will be given to enable persons desirous of contesting the plaintiff's right, or of establishing a prior right to the produce of the land, to appear either in person or by an authorized agent before the Court for that purpose, and the failure so to attend, before the summary decision be passed, will be held to bar the claim of any third party founded on any contract for the produce of the land in question, unless it be established by a regular suit.

and public notice of claim how given.

Fourth.—If the officer serving the process shall not be able to execute it on the person of the defendant, he shall nevertheless publish the claim in the manner above directed, and if the defendant shall not appear to answer to the complaint within the period specified in the summons, and no other claim be referred in bar of that of the plaintiff, the Judge ³ * * shall, after taking evidence to establish the deed and other allegations of the plaintiff, proceed to the adjudication of the claim, in the same manner as if the defendant had personally appeared.

On non-appearance of defendant or other claimants, evidence to be taken, and case decided *ex parte*.

¹The words "or City" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

²The words "or to a registrar exercising the powers of a Magistrate" were repealed, *ibid*.

³The words "or other officer" which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

(Section 3.)

In what cases award shall be passed, adjudging plaintiff's right to produce.

Fifth.—If the defendant or his authorized agent should attend within the period specified, and should deny the execution of the deed of engagement filed by the complainant, proof of the same shall be taken ; and if its voluntary execution be established to the satisfaction of the Court ¹* * * * and no preferable claim be established by a third party, a summary award shall be made, adjudging to the plaintiff the right of receiving the crops according to the terms of the agreement.

The same principle shall be applied if the engagement be admitted and no satisfactory reason be shown why the defendant should not be held to the performance of his contract.

If claim be not established, plaintiff to pay costs and compensation to defendant.

Sixth.—If it be proved that the engagement was not duly and voluntarily executed by the defendant, or if it should appear that the proceeding is otherwise litigious and oppressive, and the claim unfounded, or that the plaintiff had no sufficient cause to warrant his application to the Court, the complaint shall be dismissed, and the plaintiff shall be made liable to the payment of costs and such reasonable sum in addition as may seem to the Judge ²* * * * a proper compensation to the defendant for any trouble and annoyance to which he may have been subjected.

Notice to third parties in what cases, and their claims how investigated.

Seventh.—If it should appear in the course of the inquiry that the defendant is under engagement for the same land to a third party, notice shall immediately be issued for that party to appear and plead, either in person or by *vakil* ; and if such person or any third party shall, previously to the decision of the case, come forward and produce a similar deed of engagement, stipulating for the produce of the same portion of land, the Judge ²* * * * shall, after such summary investigation as may be necessary, determine whether either of the parties have any just claim to the produce of the land, and, if so which of them may have the prior and better claim ; a preference will of course be given to engagements duly registered ³* * * *

The result of such investigation shall be recorded, and a decree passed adjudging the question of right between the parties.

Defendant not to be subjected to unnecessary detention.

Eighth.—No defendant who may attend under the process described in this section shall be confined in jail, or be in any manner detained, longer than may suffice to take his answer to the claim and to obtain from him such further explanations as the nature of the answer may suggest.

¹The words "or other tribunal trying the case" were repealed, by the Amending Act, 1891 (XII of 1891).

²The words "or other officer trying the case," which were repealed, by the Amending Act, 1891 (XII of 1891), are omitted.

³The words and figures "under the provisions of Regulation 20, 1812," which were repealed by the Repealing Act, 1876 (XII of 1876), are omitted.

of 1823.]

(Sections 4, 5.)

Ninth.—If, pending, the summary inquiry in the manner above directed, it shall appear that the plant on the ground is in a state fit to be cut, and will be injured or destroyed if not cut, it shall in such case be competent to the Judge ¹* * * * to pass an order for the delivery of the plant to either of the parties provided that the said party consents and engages to pay to the other claimant (if the summary award should be ultimately in favour of the latter) a specific pecuniary compensation ;

In what cases order may issue to deliver plant to a party, before summary inquiry completed.

the amount of such compensation shall be fixed by the Judge ² * in communication with the parties, and shall be regulated with reference to the estimated produce of the ground, and to the probable value of such produce when manufactured ; and the amount, when so fixed, shall be carefully recorded on the proceedings.

4. *First.*—Any person in whose favour a summary award shall have been passed for the produce of any defined spot of land shall be entitled to place a watch over the same, and to prevent the cutting and removal of the plant in any manner contrary to the stipulations of his agreement ;

Authority to watch fields and to prevent removal of plant given to parties in certain circumstances.

and, in the event of any attempt being made to cut or remove the plant, it shall be competent to the person holding the decree to apply to the nearest police *daroga* and to claim from him the assistance of the police in preventing such removal ;

it shall, moreover, be the duty of the police-officers and of all other officers on such a decree being exhibited, to aid the person in whose favour it may have been passed to the utmost of their power.

Second.—In order that the foregoing rule may not operate to the prejudice of the landholders, who ³* * * * are authorized to attach the crops for the realization of rents justly due to them, it is hereby provided that, whenever any manufacturer, who may have obtained an award under the foregoing rules, may cause the plant to be cut and taken away, he shall be held responsible, conjointly with the *raiyat*, for any arrear of rent which may have been due on account of the specific parcel of ground from which the indigo-plant may have been taken.

Security for rent due to landholders how provided.

5. *First.*—In cases in which a *raiyat* who may have received advances and entered into written agreements for the cultivation and delivery of indigo-plant, in the manner indicated in this Regulation, shall have failed to cultivate the ground specified, or, having cultivated it, shall have failed or refused to complete his engagement, or shall have sold, made away with,

Suits by parties injured by breach of contract in regard to cultivation and delivery of indigo-plant.

¹The words "or other officer trying the case," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

²The words "or other person trying the case," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

³The words "by the existing Regulations," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

(Sections 6—8.)

or transferred the produce to another person, the party with whom such agreement was first made shall be at liberty to institute, at his option, either a summary or a regular suit.

Judgment to what extent in summary suits.

Second.—If the summary process be adopted and the cause be decided in favour of the plaintiff, the defendant shall be subjected to the payment of the amount of the advances actually received by him, with interest on the same, and the costs of the summary process.

Third.—[*Judgments in regular suit.*].—*Rep. by the Bengal Indigo Contracts Act, 1836 (X of 1836).*

Penalty in regular suits where breach of contract not ascribable to fraud or dishonesty.

Fourth.—If no fraud or dishonest dealing be established, and the failure of a *raiya*t or other contractor to execute the stipulations of his engagement by the delivery of indigo-plant in the manner stipulated be owing to accident, or to any cause not implying fraud or dishonesty, the penalty to be adjudged against a contractor shall not exceed three times the sum advanced as the consideration for executing the deed, including interest.

Investigations how and by whom conducted.

6. ¹* * investigations under this Regulation shall be conducted according to the form and in the manner prescribed for the conduct of ¹* * suits for arrears of rent ²* * * *. It shall ²* * be competent to any person whose claim under a deed of engagement for the cultivation and delivery of indigo plant may have been set aside ³* * *, or who may be otherwise dissatisfied with the decision passed on ¹* * ⁴[an investigation] under the foregoing provisions, to institute a regular suit for the recovery of the penalty stipulated in the deed of engagement, or for the establishment of any other claim or interest to which he may deem himself entitled.

7, 8. [*Stamp on contract concerning indigo-plant; such contract may include several individuals and separate transactions.*].—*Rep. by the Court-fees Act, 1870 (VII of 1870.)*

¹The word "summary" which was repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

²Words repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

³The words "by a summary award" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

⁴These words were substituted for the words "a investigation" by the Amending Act, 1891 (XII of 1891).

Bengal Regulation VII of 1823.

[The Indian Civil Service (Bengal) Loans Prohibition Regulation, 1823.]¹

SHORT TITLE GIVEN	Act V of 1897.
REPEALED IN PART	{ Act XVI of 1874. Act I of 1903.
AMENDED	Act V of 1897.
	(a) The Government of India (Adaptation of Indian Laws) Order, 1937.
ADAPTED	(b) The Adaptation of Laws Order, 1950.

(30th October, 1823)

A Regulation for prohibiting loans by covenanted Civil Servants from persons subject to their official authority and influence.

1. Whereas by the existing Regulations all covenanted Civil Servants² * , employed in the judicial and revenue departments of the service, are prohibited from lending money, directly or indirectly, to any proprietor or farmer of land, dependent *talukdar*, under-farmer or *raiya*t, or their sureties ; and whereas it is equally necessary to prohibit the public officers from borrowing money from persons subject to their official authority and influence, the following rules have been enacted by the Governor General in Council, and are to be in force from the date of their promulgation throughout the provinces immediately subject to this Presidency.

Preamble.

2. *First*.—All covenanted Civil Servants, in whatever department of the public service they may be employed, are henceforward prohibited, under pain of dismissal from office, from borrowing money from, or in any way incurring debt to, any³ * * officer under their authority, or under the authority of any of their subordinate functionaries, or from or to the known surety, agent, relation, connection or dependent of any such³ * * officer, or from or to any person of whom such³ * * officer may be known to be or to have been the servant, agent, surety or dependant.

Civil Servants prohibited from borrowing money from officers under their authority, etc.;

¹SHORT TITLE.—This short title was given by the Amending Act, 1897 (V of 1897).

LOCAL EXTENT.—This Regulation was passed for the whole of the former Province of Bengal—see sec. 1.

It has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), sec. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), sec. 3, to be in force in West Jalpaiguri and the Western Duars, in the Jalpaiguri district.

The words "of the Company" were omitted by para. 3 and the Sixth Part of the Adaptation of Laws Order, 1950.

³The word "Native" was omitted, *ibid*.

250 *The Indian Civil Service (Bengal) Loans Prohibition Regulation, 1823.*

[Ben. Reg. VII

(Sections 3—6.)

and from
other
persons
officially
account-
able to
them.

Second.—In like manner, and under the like penalty, all officers of Government, being covenanted Civil Servants, are henceforward prohibited from borrowing money from, or in any way incurring debt to, any manager, guardian, executor, *amin*, *sazawal*, *gumashta*, farmer, *mutawalli* or other person, who may in any way be officially accountable to them, or from and to the known surety, agent, relation, connection or dependant of such person.

Third.—[*Rules applied to commercial officers.*]*—Rep. by the Repealing Act, 1874 (XVI of 1874).*

Certain
officers
prohibited
from
incurring
debt to
zamindars
and others
residing, or
having
property,
within
their
districts.

3. ¹[All Commissioners, District and Sessions Judges, Deputy Commissioners and Assistant Commissioners, being members of the Indian Civil Service], are prohibited, under pain of dismissal from office, from borrowing money from, or in any way incurring debt to, any *zamindar*, *talukdar*, *raiya* or other person possessing real property, or residing in, or having a commercial establishment within, the city, district or division to which their authority may extend.

Penalty for
lending
money to
Civil
Servants.

4. All persons are prohibited from lending money, or otherwise becoming in any way creditor, to any officer of ²[the Government], being a covenanted Civil Servant, in contravention of the above rules : and any person lending money, or in any way becoming creditor, to any such public officer in breach of the prohibition shall forfeit to ²[the Government] a sum equal to the amount for which he shall have so illegally become creditor.

5. [*Report by officers in debt.*]*—Rep. by the Repealing Act, 1874 (XVI of 1874).*

Penalty for
officers
receiving
new
appoint-
ments, if
indebted to
indi-
viduals con-
trary to
above
rules,
omitting to
report.

6. ³* * if any covenanted servant who may be hereinafter appointed to any office, shall at the time of such appointment be indebted to any person with whom it would be illegal for him to contract a loan, while holding such office, it shall be incumbent on such servant, before entering on the duties of the

¹These words were substituted for the original words by the Amending Act, 1897 (V of 1897).

²The words "the Crown" were substituted for the word "Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws), Order, 1937, and the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

³The words "In like manner," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

*The Indian Civil Service (Bengal) Loans Prohibition 251
Regulation, 1823.*

of 1823.]

(Sections 7, 8.)

office, to make known the circumstance to the ¹[State Government] ; and, failing to do so, he shall be subject to the same penalty as if the debt had been contracted subsequently to his being appointed to the said office.

7. [*Penalty on Natives knowingly taking office in contravention of above rules.*—*Rep. by the Amending Act, 1903 (I of 1903).*]

8. Suits for the recovery of penalties incurred under this Regulation shall and may be instituted under the special instructions of the ¹[State Government], and shall be conducted by the Superintendent and Remembrancer of Legal Affairs, or by such other officer as ²[the State Government] may nominate for that purpose.

Suits for
recovery of
penalties.

Such suits shall be instituted in the ³* Court of the division within which the transaction may have taken place, or the lender may reside or may possess real or personal property.

An appeal shall lie from judgments passed in such cases, in like manner as from other judgments passed in original suits ⁴*

* ; and the judgments shall be enforced under the provisions ⁵* * for the execution of other decrees of the Civil Courts.

¹The words "Provincial Government" were substituted for the words "Local Government" by paragraph 4(I) of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

²The words "the Local Government" were substituted for the word "Government" by the Amending Act, 1897 (V of 1897), and the words "Provincial Government" were substituted for the words "Local Government" by paragraph 4(I) of the Government of India (Adaptation of Indian Laws) Order, 1937. The word "State" was subsequently substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

³The word "Provincial" which was repealed by the Repealing Act, 1874 (XVI of 1874), is omitted.

⁴The words "by the Provincial Courts" were repealed, *ibid.*

⁵The words "of the Regulations" were repealed, *ibid.*

Bengal Regulation IX of 1825.

(The Bengal Land-revenue Settlement Regulation 1825.)¹

EXTENDED	...	...	Act XI of 1859.
SHORT TITLE GIVEN	...	...	Act I of 1903.
REPEALED IN PART	...	...	{ Act XX of 1865. Act XII of 1891.
AMENDED	...	...	{ Ben. Act V of 1915. Ben. Act I of 1939.
REPEALED IN PART AND AMENDED	...	...	Act I of 1903.
ADAPTED	...	...	{ (a) The Government of India (Adaptation of Indian Laws) Order, 1937. (b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948. (c) The Adaptation of Laws Order, 1950.

(5th May 1825.)

A Regulation for extending the operation of Regulation VII, 1822², for authorizing the Revenue-authorities to let in farm estates under temporary leases, on the default of the malguzars, or to hold the same khas for a term of years; for modifying and adding to the rules contained in Regulation II, 1819³; and for making certain other amendments in the existing Regulations.

1. Whereas the provisions of Regulation VII, 1822², are in force only [within the Ceded and Conquered Provinces, in the district of Cuttack, and] in the pargana of Pataspur and its dependencies ; Preamble.

And whereas there are within the other Provinces belonging to this Presidency various *mahals* and tracts for which a permanent settlement has not yet been concluded, and it appears to be advisable that the Revenue-authorities should be vested, in regard to such *mahals* and tracts, with the same powers as belong to the like officers within the Ceded and Conquered Provinces ;

And whereas the principle of the rules contained in the said Regulation, relative to lands held free of assessment, or at a *mukarrari jama* under special grants, is equally applicable to such

¹The words "Provincial Government" were substituted for the words (I of 1903).

LOCAL EXTENT.—This Regulation was passed for the whole of the former Province of Bengal—see the concluding paragraph of sec. 1.

It has been declared by the Laws Local Extent Act, 1874 (XV of 1874), sec. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), sec. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

²The Bengal Land-revenue Settlement Regulation, 1822.

³The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.

(Section 2.)

tenures in all parts of the country ; and it appears to be likewise expedient to make provision for the occasional exercise, by the Revenue-officers in the Lower Provinces, of the powers specified in the said Regulation, for the summary trial of certain suits between individuals, subject as therein provided to an appeal to the *Adalat* by a regular suit ;

And whereas, a frequent recourse to the sale of lands for the recovery of arrears of revenue in districts of which the assessment has not been fixed in perpetuity being inexpedient, it appears to be necessary and proper that the Revenue-authorities should be empowered to let in farm for a term of years the estates of defaulters under temporary leases, or to hold the same *khas* for the purpose of making a *raiayatwar* settlement, where that measure may be deemed advisable ;

And whereas it has appeared to be expedient to modify and to add to the provisions contained in Regulation II, 1819¹ ; ²*

* * * * *

The following rules have been enacted, to be in force from the date of their promulgation, within the ³[territories] belonging to the Presidency of Fort William.

2. *First*.—The provisions contained in clause *Sixth*, section 2, and in the thirty-three following sections of Regulation VII, 1822⁴, are hereby extended to all lands (including *jagirs*, *mukarraris* and other tenures held free of assessment or at a quit-rent under special grant) not included within the limits of estates for which a permanent settlement has been concluded in the manner prescribed by Regulation VIII, 1793⁵, ⁶* * as far as the same may be applicable.

Provisions of Regulation VII, 1822, extended to lands not within limits of permanently settled estates.

To be in force in estate held *khas*;

and applicable to Sundarbans, etc.

Second.—The said provisions shall likewise be in force in all estates which may now or hereafter be held *khas*, during the period for which they may be so managed.

Third.—The provisions aforesaid shall also apply to the Sundarbans, [*the hill lands of Bhagolpur,*] and other extensive forests and wastes, not included within the limits of *parganas*, *mauzas* or other revenue divisions, specified at the time of settlements as belonging to the *mahals* then assessed, as well as to all estates bordering on such forests or wastes.

¹The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.

²Portion of the preamble which was repealed by the Amending Act, 1891 (XII of 1891), is omitted.

³Substituted for the word "Provinces" by para. 3 and the Sixth Schedule of the Adaptation of Laws Order, 1950.

⁴The Bengal Land-revenue Settlement Regulation, 1822.

⁵The Bengal Decennial Settlement Regulation, 1793.

⁶The words and figures "and Regulations 2 and 22, 1795," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

The Bengal Land-revenue Settlement Regulation, 1825. 255
of 1825.]

(Sections 3, 4.)

3. It shall be competent to the ¹[State Government] to vest any Collector or other officer exercising the powers of Collector within the States² of ³[West Bengal] [Bihar⁴ or Orissa] ⁵* * * with the several powers specified in section 20, Regulation VII, 1822,⁶ in the manner specified in the second clause of that section, within such local limits as may, from time to time, appear to be advisable; and the several provisions contained in section 21 and the fourteen following sections shall apply to the several *parganas* or other local divisions so placed under the jurisdiction of the Collector or other officer aforesaid.

Power to vest Collector, etc., with powers specified in section 20, Regulation VII of 1822.

4. Whenever an arrear of revenue shall accrue on account of any *mahal* for which an engagement may have been taken by the proprietors or persons recorded as proprietors, not being an estate of which the assessment has been fixed in perpetuity, and the *malguzars* shall fail to discharge the same within one month of the date on which it became due, then, if there shall appear to be any objection to the sale of the estate, and the arrears cannot otherwise be recovered (on which points the decision of the Revenue authorities is to be held conclusive), it shall be competent to the Collector or other officer exercising the powers of Collector, with the sanction of the Board, ⁷* * * * to annul the existing engagements with the *malguzars*, and to let the *mahal* in farm for such period, not exceeding fifteen years, as the ⁸[Board of Revenue] may appoint, or to hold the *mahal* under *khas* management for a like period.

Procedure when arrear of revenue on account of *mahals* not permanently assessed is not paid within one month after due date, and objections appear to public sale.

In such cases, if the *mahal* shall yield a higher *jama* than that for which the *malguzars* may have engaged, the excess shall in the first place be appropriated to the liquidation of the arrear due on account of it, or such portion thereof as the farmer may not have separately agreed to discharge or as may not otherwise have been recovered; and, out of any surplus remaining, the *malguzars* shall receive such *malikana*, not being less than

¹The words "Provincial Government" were substituted for the words "Local Government" by paragraph 4(I) of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was subsequently substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

²The word "States" was substituted for the words "Provinces" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

³Substituted for the word "Bengal" by para. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

⁴The word "or" was inserted by the Amending Act, 1903 (I of 1903).

⁵The words "and Benares," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

⁶The Bengal Land-revenue Settlement Regulation, 1822.

⁷The words "and subject to the orders of Government" were omitted by the Bengal Decentralisation Act, 1915 (Ben. Act V of 1915).

⁸These words were substituted for the words "Governor General in Council," *ibid.*

(Section 5.)

five per cent. nor more than ten per cent. on the assessment of the last year of their engagement, as the ¹[State Government] may direct.

Modifica-
tion of
Regulation
II of
1819.

5. *First.*—The following rules are enacted in modification of sections 5, 6, 8, 10, 11, 13, 15, ²[and 22] of Regulation 11, 1819³.

Collector
making
settlement
to issue
notifica-
tion and
require
appearance
of persons
holding
lands free
of assess-
ment;

Second.—Whenever a Collector or other officer exercising the powers of Collector shall visit, or be about to visit, any *mahal* for the purpose of making a settlement in the manner prescribed in Regulation VII, 1822⁴, it shall be competent to him, by a notification to be stuck up in some conspicuous place within such *mahal* and each village thereof, if consisting of several villages, to require all persons holding lands free of assessment or at a fixed *jama*, within or adjoining to the village or villages in which the lands of such *mahal* or any part thereof may be situate, to appear before him either in person or by *vakil* within a reasonable time, not being less than one month from the date of such notification, at such place within the *mahal* as he may select for holding his office, and to attend him from day to day while he may continue within the *mahal*, with all *sanads* or other writings in virtue of which they may possess the lands, or under which the lands may have been or may be claimed to be, held free of assessment or at fixed *jama*, together with any evidence they may desire to have taken in support of their claims.

may cause
lands to
be
measured;

Third.—It shall likewise be competent to Collectors and other officers aforesaid, when engaged in the settlement of any *mahal* under the rules of the Regulation above-mentioned or preparatory thereto, to measure or cause to be measured, without a previous reference to the Board of Revenue, all lands, whether *malguzari* or *lakhiraj*, belonging or adjoining to the village or villages in which such *mahal* or any part thereof may be situated.

to give
public
notice one
day
previous to
that on
which it is
intended
to hold
proceed-
ings.

Fourth.—When the Collector or other officer aforesaid shall have commenced the settlement of any *mahal* in regard to which he may have issued a notification as aforesaid, and shall propose to hear the claims of persons holding lands free of assessment or at a fixed *jama*, and to receive their *sanads* and other writings as aforesaid or any of them, the period fixed in the notification for the attendance of such parties being arrived, he shall, on the day preceding that on which he may intend to hold proceedings—

¹See foot-note 1 on page 255, *ante*.

²This word and figure were substituted for the figures and word "22 and 30" by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

³The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.

⁴The Bengal Land-revenue Settlement Regulation, 1822.

The Bengal Land-revenue Settlement Regulation, 1825. 257
of 1825.]

(Section 5.)

in the said cases or any of them, notify such intention by an *istahar* stuck up in his office and in some place open to the public within the *mahal*.

Fifth.—If any person holding land free of assessment or at a fixed *jama* as aforesaid shall fail to attend either in person or by *vakil*, after notice being given in the manner above prescribed, the Collector shall be competent to proceed *ex parte* to investigate the title of such party to hold the land in his possession free of assessment, and with the sanction of the Board of Revenue to resume the said lands, if they appear to be held on an invalid title.

Procedure on failure of persons to attend after notice.

Nor shall any person defaulting as above, or neglecting to appear and give answer when required to do so, in the manner prescribed in Regulation II, 1819¹, be entitled to stay the resumption and assessment of his lands under the rule contained in section 22 of that Regulation :

Provided, further, that the rule contained in clause *Second*, section 13, Regulation II, 1819¹, shall be and be held applicable to such persons, as well as to persons who may appear when summoned under the provisions of that Regulation, or in the manner hereinbefore provided.

Sixth.—It shall be competent, to Collectors and other officers making settlements as aforesaid either to complete the investigation of the claims of persons holding land free of assessment or at a fixed *jama*, under the rules of the 15th and following sections of Regulation II, 1819¹, with the modifications hereinafter provided, during the progress of the settlement, or to limit their proceedings to the ascertainment of the land actually held under such tenures, and the record of the title-deeds produced by the parties, postponing the further investigation of the case to a future period.

Collector may either complete investigation of claims or limit proceedings to certain points.

When any Collector or other officer may postpone the investigation of any case as aforesaid, he shall at the same time notify to the party the time and place at which the further investigation is to be held, or, if circumstances prevent him from doing so, he shall, before resuming the inquiry, give the party one month's notice to attend, and, on the failure of any party to attend when so warned, the Collector or other officer aforesaid shall be competent to proceed to try the case *ex parte*, and, with the sanction of the Board, to resume and assess the lands.

Seventh.—Collectors or other officers who may proceed to investigate claims to *lakhiraj* lands during the progress of a settlement shall follow the rules of the 15th and following sections of Regulation II, 1819¹, in all cases wherein the parties may attend and deny the liability of their lands to assessment, subject to the modifications hereinafter provided.

What provisions to regulate investigation of claims to *lakhiraj* lands.

¹The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.

(Section 5.)

Bar to
resump-
tion of
lands with-
out sanc-
tion.

Procedure
by Board.

Regula-
tions
applied to
investiga-
tion by
Collectors.
Stamped
paper not
necessary.

Award of
charges to
witnesses.

Procedure
for
persons
claiming
to hold
lands
revenue-
free.

Eighth.—No lands shall be resumed by a Collector, even though the parties may confess that they are liable to assessment, without the sanction of the Board of Revenue, save and except as hereinafter provided ; but on such confession duly attested, which will of course supersede the necessity of any further inquiry, it shall be competent to the Board forthwith to direct the lands to be assessed, unless the same be held by village or zamindari servants in lieu of wages, which shall not be resumed without the sanction ¹[of the State Government] :

Provided also that in all cases wherein it may appear to the Board that the resumption of lands held free of assessment would occasion serious distress to the holders, it shall be their duty to submit a report of the circumstances to the ²[State Government]

Ninth.—The provisions of clause *First*, section 23, ³* * * and section 28, Regulation VII, 1822⁴, shall be applicable to cases investigated by Collectors under the rules of Regulation II, 1819⁵, or under the provisions of this Regulation.

Tenth.—It shall not be necessary to use stamped paper for the proceedings held or exhibits filed before the Revenue-authorities in cases originating with a Collector or other officer ⁶[of the Government] claiming to assess land held free of assessment ; but the said authorities are authorized in the said cases, as in all other cases wherein they may exercise judicial powers ⁷* * * to award to witnesses their reasonable charges, and to levy the same, as well as all costs adjudged by them, by the process in force for the recovery of arrears of the Government revenue.

Eleventh.—Persons claiming to hold lands exempt from revenue shall, with their petitions of plaint, deliver to the Collector or other officer to whom the same may be preferred all *sanads* and other writings on which their claim may be founded and shall insert in the said petition a full specification of the several particulars required to be registered by the rules in force relative to the registry of rent-free tenures, and of the grounds on which their claim is founded:

¹The words "of the Provincial Government" were substituted for the words "of Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²See foot-note 1 on page 255, *ante*.

³The word and figures "section 25" have been omitted in consequence of the repeal made by the Pleaders, Mukhtars and Revenue Agents Act, 1865 (XX of 1865).

⁴The Bengal Land-revenue Settlement Regulation, 1822.

⁵The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.

⁶The words "of the Crown" were substituted for the words "of Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁷The words "under the provisions of the existing Regulations" which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

of 1825.]

(Section 5.)

If the claim shall involve only the interests of ¹[the Government], the Collector shall proceed without delay to investigate the case giving, however, eight days' previous notice to the party of the day on which he may propose to bring it to a hearing in the mode prescribed for the Civil Courts.

Investigation.

If the claim shall be against any individual singly or jointly with ¹[the Government], the Collector shall serve him with a notice containing a statement of the demand, and requiring his attendance in person or by *vakil* duly authorized, within the period of one month, with any papers or evidence he may desire to produce in denial of the claim; and, on the appearance of such defendant, the Collector, after allowing him to inspect and examine the claimant's petition of plaint, and the writings therein referred to, shall call upon him to deliver, within the period of seven days, a statement of the objections he may desire to urge against the claim.

In such cases no other pleadings shall be required from the parties than a plaint and answer, but it shall and may be lawful for Collectors to receive and record such subsidiary pleadings as may appear requisite for the elucidation of the merits of the claim.

Pleadings.

Collectors shall proceed to investigate every such case as soon as possible after the answer of the defendant shall be received; giving, however, as aforesaid, eight days' previous notice to the parties of the day on which he may propose to bring it to a hearing:

Provided that, in cases wherein the parties concerned or their authorized representatives shall desire or consent (the same being signified in a written petition or *ikrarnama* to be filed with the proceedings) to have an immediate decision, whether the case shall originate in a claim on behalf of ¹[the Government] or in the suit of an individual, and whether the proceedings of the Collector shall be held under the provisions of Regulation II, 1819², or under those of this or any other Regulation touching the matter, it shall be competent to the Collector to proceed forthwith to the investigation and decision of the case, without issuing any formal summons or notice.

Summary proceedings.

Twelfth.—Whenever a Collector or other officer exercising the powers of Collector shall be of opinion that any tract of land belongs to ¹[the Government], and that no individual has *bona fide* possession thereof, it shall be competent to him, by a notification to be stuck up in his *cutcherry*, in the Zila Court and in the *cutcherry* of the *kanungo*, *Munsif* or *thanadar* to whose jurisdiction the land in question may belong or adjoin, to require all claimants to the same to appear before him within a reasonable time, to be fixed by the Board of Revenue, not

Procedure as to and appearing to belong to the Government and no person *bona fide* in possession.

¹The words "the Crown" were substituted for the word "Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.

(Section 6.)

being less than six weeks from the date of such notification ; and, on the appearance of such claimants, to proceed to investigate their claims in the manner prescribed by Regulation II, 1819¹, for investigations relative to the liability of lands to be assessed as herein modified :

Provided further that, if the Collector or other officer aforesaid shall decide that none of the claimants have *bona fide* possession of the lands in question, and his decision shall be affirmed by the Board of Revenue, the said lands shall be at the disposal of ²[the State Government] until the same shall be adjudged to be private property by a decree of Court on a regular suit :

Provided also that all such suits, if preferred by one of the claimants before the Collector, shall be dismissed, with costs, unless instituted within six weeks of the date on which the Board may affirm the decision of that officer, and that the rule contained in clause Second, section 13, Regulation II, 1819¹, shall be strictly applied to such suits : nor shall any such suit be admitted on the part of any person who may not have appeared before the Collector pursuant to notice, unless he shall be able to show good and sufficient cause for his non-appearance and shall apply for permission to sue within six weeks of his being informed of the Board's decision :

Provided further that, if the party shall not prosecute his suit with six weeks of being permitted to sue, the suit shall be dismissed with costs.

Power to
vest
Collector,
deputed to
hold local
inquiry
within
mahal,
with same
powers in
regard to
lands held
free of
assessment
in villages
adjoining
mahal,

6. It shall be competent to the ³[State Government], by ⁴[notification in the ⁵Official Gazette], to vest any Collector or other officer who may be deputed to hold a local inquiry within the limits of any *mahal* with the same powers and authority in regard to all lands held free of assessment within or adjoining to the village or villages in which the lands of such *mahal* or any part thereof may be situated, and for the investigation of all claims touching such lands as by the foregoing provisions are vested in Collectors making settlements in the manner prescribed by Regulation VII, 1822⁶, and also from time to time to depute Collectors or other officers aforesaid for the purpose of ascertaining, recording or investigating the said claims in the manner above prescribed.

¹The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.

²The words "the Provincial Government" were substituted for the word "Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order, 1930.

³See foot-note 1 on page 255, *ante*.

⁴The words "an order in Council" in the original text, are to be read as if the words "notification in the local official Gazette" were substituted therefor—see the Amending Act, 1903 (I of 1903).

⁵The words "Official Gazette" were substituted for the words "local official Gazette" by paragraph 4(I) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁶The Bengal Land-revenue Settlement Regulation, 1822.

The Bengal Land-revenue Settlement Regulation, 1825. 261
of 1825.]

(Sections 7—9.)

7. The particulars of all lands held free of assessment within all villages and *mahals* of which the settlement may be made under the provisions of Regulation VII, 1822,¹ shall be fully recorded in the proceedings of the Collector or other officer making the settlement.

Lands held free of assessment to be specified in proceedings.

8. Nothing contained in Regulation II, 1819², or in any other Regulation in force, shall affect, or be considered to affect, the provisions contained in section 10, Regulation XIX, 1793³ * * * relative to grants illegally made subsequently to the dates specified in the said ⁵[section]; and in all cases in which it shall be established to the satisfaction of the Revenue-authorities that any lands now held free of assessment were subject to the payment of the revenue at the dates aforesaid or subsequently thereto, and that they have not been thereafter exempted from the payment of revenue under the authority of the ⁶[State Government] nor adjudged to be exempted from payment of revenue under a regular decree of Court, it shall and may be lawful for the said authorities forthwith to resume and assess the said lands; save and except in cases wherein the revenue of the same may belong to a *zamindar*, *talukdar* or other *malguzar* with whom a permanent settlement has been concluded; nor shall the provisions of section 22, Regulation II, 1819², apply to such cases.

Saving of certain Regulations.

9. [*Rules relative to the abolition of the said duties, etc., applicable to what cesses.*—Rep. by the Amending Act, 1891 (XII of 1891).

¹The Bengal Land-revenue Settlement Regulation, 1822.

²The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.

³The Bengal Revenue-free Lands (Non-Badshahi Grants) Regulation, 1793.

⁴The words and figures "section 11, Regulation 31, 1803, and in the corresponding enactments applicable to Benares and the Conquered Provinces," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

⁵This word was substituted for the words "rules respectively" by the Amending Act, 1903 (I of 1903).

⁶See foot-note 1 on page 255, *ante*.

¹Bengal Regulation XI of 1825

(The Bengal Alluvion and Diluvion Regulation, 1825.)¹

SUPPLEMENTED	...	...	{ Ben. Act IV of 1868. Ben. Act V of 1920.
SHORT TITLE GIVEN	...	...	Act V of 1897.
REPEALED IN PART	...	...	{ Act VIII of 1885. Act I of 1903.
ADAPTED			(a) The Government of India (Adaptation of Indian Laws) Order, 1937. (b) The Adaptation of Laws Order, 1950.

(26th May 1825.)

A Regulation for declaring the rules to be observed in determining claims to lands gained by alluvion, or by dereliction of a river or the sea.

1. In consequence of the frequent changes which take place in the channel of the principal rivers that intersect the ²[territories] immediately subject to the Presidency of Fort William and the shifting of the sands which lie in the beds of those rivers, *chars* or small islands are often thrown up by alluvion in the midst of the stream, or near one of the banks, and large portions of land are carried away by an encroachment of the river on one side, whilst accessions of land are at the same time, or in subsequent years, gained by dereliction of the water on the opposite side; similar instances of alluvion, encroachment and dereliction also sometimes occur on the sea-coast which borders the southern and south-eastern limits of Bengal.

Preamble.

The lands gained from the rivers or sea by the means above-mentioned are a frequent source of contention and affray, and although the law and custom of the country have established rules applicable to such cases, these rules not being generally known, the Courts of Justice have sometimes found it difficult to determine the rights of litigant parties claiming *chars* or other lands gained in the manner above described.

¹This Regulation shall stand repealed with the coming into force of clause (f) of section 59 of the West Bengal Land Reforms Act, 1955 (West Bengal Act X of 1956).

²SHORT TITLE.—This short title was given by the Amending Act, 1897 (V of 1897).

LOCAL EXTENT.—[This Regulation was passed for the whole of the former Province of Bengal—see the concluding paragraph of sec. I.

It has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), sec. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), sec. 3, to be in force in the following Scheduled Districts, namely:—

West Jalpaiguri, in the Jalpaiguri district, and
the Tarai, in the Darjeeling district.

³Substituted for the word "Provinces" by para. 3 and the Sixth Schedule of the Adaptation of Laws Order, 1950.

(Sections 2—4.)

The Court of *Sadar Diwani Adalat*, with a view to ascertain the legal provisions of the Muhammadan and Hindu laws on this subject, called for reports from their law officers of each persuasion, and on consideration of the reports furnished by the law officers in consequence, as well as of the decisions which have been passed by the Court of *Sadar Diwani Adalat* in cases brought before them in appeal which involved the rights of claimants to lands gained by alluvion, or by dereliction of rivers or the sea, the Governor-General in Council has deemed it proper to enact the following rules for the general information of individuals as well as for the guidance of Courts of Judicature ; to be in force, as soon as promulgated throughout the whole of the ¹[territories] subject to the Presidency of Fort William.

Claims and disputes as to alluvial lands to be decided by usage when clearly recognised and established.

2. Whenever any clear and definite usage of *shikast paiwast* respecting the disjunction and junction of land by the encroachment or recess of a river may have been immemorially established for determining the rights of the proprietors of two or more contiguous estates divided by a river (such as that the main channel of the river dividing the estates shall be the constant boundary between them, whatever changes may take place in the course of the river, by encroachment on one side and accession on the other), the usage so established shall govern the decision of all claims and disputes relative to alluvial land between the parties whose estates may be liable to such usage.

Where no usage established, claims how decided.

3. Where there may be no local usage of the nature referred to in the preceding section, the general rules declared in the following section shall be applied to the determination of all claims and disputes relative to lands gained by alluvion or by dereliction either of a river or the sea.

Lands gained by gradual accession from recess of river or sea.

4. *First*.—When land may be gained by gradual accession, whether from the recess of a river or of the sea, it shall be considered an increment to the tenure of the person to whose land or estate it is thus annexed, whether such land or estate be held immediately from ²[the Government] by a *zamindar* or other superior landholder, or as a subordinate tenure by any description of under-tenant whatever :

Extent of interest in increment of person in possession.

Provided that the increment of land thus obtained shall not entitle the person in possession of the estate or tenure to which the land may be annexed to a right of property or permanent interest therein beyond that possessed by him in the estate or tenure to which the land may be annexed, and shall not in any

¹Substituted for the word "Provinces" by the para. 3 and the Sixth Schedule of the Adaptation of Laws Order, 1950.

²The words "the Crown" were substituted for the word "Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "Government" was subsequently substituted for the word "Crown" by para. 4(1) of the Adaptation of Laws Order, 1950.

(Section 4.)

case be understood to exempt the holder of it from the payment to ¹[the Government] of any assessment for the public revenue to which it may be liable under the provisions of Regulation II, 1819², or of any other Regulation in force.

³Nor, if annexed to a subordinate tenure held under a superior landholder, shall the under-tenant, whether a *khudkash* raiyat, holding a *maurusi istimrari* tenure at a fixed rate of rent per *bigha*, or any other description of under-tenant liable by his engagements, or by established usage, to an increase of rent for the land annexed to his tenure by alluvion, be considered exempt from the payment of any increase of rent to which he may be justly liable.

Second.—The above rule shall not be considered applicable to cases in which a river, by a sudden change of its course, may break through and intersect an estate, without any gradual encroachment, or may by the violence of stream separate a considerable piece of land from one estate and join it to another estate, without destroying the identity and preventing the recognition of the land so removed.

When river by sudden change of course intersects estate.

In such cases the land, on being clearly recognised, shall remain the property of its original owner.

Third.—When a *char* or island may be thrown up in a large navigable river (the bed of which is not the property of an individual), or in the sea, and the channel of the river or sea between such island and the shore may not be fordable, it shall, according to established usage, be at the disposal of ¹[the Government].

Chars thrown up in navigable river.

But if the channel between such island and the shore be fordable at any season of the year, it shall be considered an accession to the land, tenure or tenures of the person or persons whose estate or estates may be most contiguous to it, subject to the several provisions specified in the first clause of this section with respect to increment of land by gradual accession.

Property therein when channel fordable.

Fourth.—In small and shallow rivers, the beds of which, with the *jalkar* right of fishery, may have been heretofore recognised as the property of individuals, any sand-bank or *char* that may be thrown up shall, as hitherto belong to the proprietor of the bed of the river, subject to the provisions stated in the first clause of the present section.

Chars, etc., thrown up in small shallow rivers.

¹See foot-note 2 on page 265, *ante*.

²The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.

³This paragraph of section 4, clause *First*, is repealed by sec. 2(1) of the Bengal Tenancy Act, 1885 (VIII of 1885), in the whole of the former Province of Bengal "except the town of Calcutta, the Division of Orissa and the Scheduled Districts". The extension of the repeal to Scheduled Districts depends upon the terms of notifications extending the Act of 1885 to such districts. Under the terms of the notification extending the Act of 1885 to the Jalpaiguri district, the repeal has taken effect in that district.

(Section 5.)

Disputes
relative to
lands
gained by
alluvion or
by dereliction
not
provided
for by
Regulation.

Fifth.—In all other cases, namely, in all cases of claims and disputes respecting land gained by alluvion or by dereliction of a river or the sea, which are not specifically provided for by the rules contained in this Regulation, the Courts of Justice, in deciding upon such claims and disputes, shall be guided by the best evidence they may be able to obtain of established local usage, if there be any applicable to the case, or, if not, by general principles of equity and justice.

Encroachments
on
beds of
navigable
rivers and
other
obstructions.

5. Nothing in this Regulation shall be construed to justify any encroachments by individuals on the beds or channels of navigable rivers, or to prevent Zila * * * Magistrates or any other officers of ¹[the Government] who may be duly empowered for that purpose from removing obstacles which appear to interfere with the safe and customary navigation of such rivers, or which shall in any respects obstruct the passage of boats by tracking on the banks of such rivers, or otherwise.

¹The words "and City" which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

²See foot-note 2 on page 265, *ante*.

Bengal Regulation XIII of 1825

[The Bengal Land-revenue Settlement (Resumed Kanungos and Revenue-free Lands) Regulation, 1825.]¹

SHORT TITLE GIVEN	...	Act I of 1903.
REPEALED IN PART AND AMENDED		Act XII of 1891.
AMENDED	...	Act I of 1903.
		(a) The Government of India (Adaptation of Indian Laws) Order, 1937.
ADAPTED		(b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.
		(c) The Adaptation of Laws Order, 1950.

(7th July 1825.)

A Regulation [to maintain the settlement made for certain lands held exempt from the payment of revenue by kanungos in the Province of Bihar; and] to provide for the future settlement [of such lands, as well as] of the lands composing other resumed lakhiraj tenures, with the present occupants, when so directed by Government.

1. *[Whereas it was enacted by section 5, Regulation II of 1816², that the revenue of lands held by kanungos generally in the Province of Bihar, in virtue of their offices, should be liable to resumption; and accordingly under that law, various resumptions of land so held took place, and the parties to whom the zamindari interest in the same appeared to belong were admitted to engage for the Government revenue; but, on the consideration of the proceedings held under the provisions of the above rule, it appeared to the Governor-General in Council to be improper wholly to deprive the kanungos or their representatives of the advantages derived from such lands, and enjoyed by them for a long course of years; and it was accordingly resolved by Government, on the 14th February, 1822, that in cases where the lands had been occupied and managed by the kanungos or their representatives, and the rents received by them, they should be replaced in possession of such lands, and a settlement made with them on the principle prescribed by clause Second, section 6, Regulation XIX of 1793,³ namely, the revenue to be paid to Government to be equal to one-half of the annual produce (or rental) of the lands, calculated*

Preamble.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Regulation was passed for the whole of the former Province of Bengal—see the concluding paragraph of sec. 1.

It has been declared by the Laws Local Extent 1874 (XV of 1874), sec. 6 to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared by notification under the Scheduled Districts Act, 1874 (XIV of 1874), sec. 3, to be in force in West Jalpaiguri in the Jalpaiguri district.

²Ben. Reg. II of 1816 was repealed by the Repealing Act, 1868 (VIII of 1868).

³The Bengal Revenue-free Lands (Non-Badshahi Grants) Regulation, 1793,

(Section 2.)

according to the rates at which other lands in the pargana of a similar description may be assessed, securing to the proprietors of the soil such malikana or other allowance as they might have received prior to the resumption of the official minha tenure;

And whereas the existing laws relative to the settlement of resumed lakhiraj tenures are not properly applicable to the case, and it appears to be expedient expressly to provide for the maintenance by the Courts of Judicature of the arrangement above described, in order that the kanungo minhadars may be secured in the possession (subject to the quit-rent fixed by Government) of the lands, rents and produce heretofore possessed by them;]

And whereas it is desirable to provide for the settlement, on the same principle, of any lands that may be resumed under the corresponding rules relating to kanungos and their official tenures in other parts of the country ;

And whereas it appears to be generally expedient to make a distinct provision for securing to the holders of lakhiraj lands resumed by the officers of Government, and assessed on the principle prescribed in clause Second, section 8, Regulation XIX, 1793¹, the benefits which that law was designed to bestow, and to declare the competency of Government, in other cases, to continue the persons who have heretofore occupied lands free of assessment, or their representatives, in the possession of the same, notwithstanding such lands being made subject to assessment ;

The following rules have been enacted for these purposes respectively, to be in force throughout the territories subject to the Presidency of Fort William from the date of the promulgation of this Regulation.

2. In case of lakhiraj tenures resumed under the provisions of Regulation 2* * * V, 1816,² or any other Regulation in force relative to lands held by kanungos by virtue of their offices, where the minha or lakhiraj tenure, and the right of property in the land, are vested in distinct parties, it shall be competent to the ⁴[State Government] by instruction to the Revenue Board or other authority empowered to make the resumption, to continue the minhadars and their heirs in possession and

Power to continue minhadars and their heirs in possession of resumed lands, heretofore held as lakhiraj by kanungos.

¹The Bengal Revenue-free Lands (Non-Badshahi Grants) Regulation, 1793.

²The figures and words "4, 1808, Regulations 2 and" which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

³The Bengal Kanungos Regulation, 1816.

⁴The words "Provincial Government" were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

of 1825.]

(Sections 3, 4.)

management of such lands, subject to such assessment as [it] shall judge it proper to direct; and the parties claiming the zamindari interest or other proprietary right in such mahals shall not be entitled to any land-rent, produce or profit beyond what they may have enjoyed up to the period of the resumption of the tenure, or would have been entitled to receive, in the event of Government having confirmed the same in perpetuity, free of assessment.

Persons, consequently, claiming to be *maliks* of the said lands, who, during the continuance of the *lakhiraj* tenure, had not possession of the same, whether they received a *malikana* allowance or otherwise, shall not disturb the possession of the *minhadars* or their heirs and representatives, in any case wherein the [State Government] may have sanctioned such possession; and any suit preferred by such persons in a Court of Judicature to recover possession, contrary to the intent and meaning of this rule, shall be dismissed with costs :

Provided, however, that in all cases of the nature above mentioned, wherein the zamindar or other proprietor of the land may have received *malikana* or other proprietary due during the existence of the *lakhiraj* tenure, he shall continue to receive the same, notwithstanding the resumption of the *lakhiraj*, in like manner as if such resumption had not taken place.

3. The tenures of the *minhadars* which have been confirmed to them with the sanction of Government by the arrangement referred to in the preamble of this Regulation, or which may be so confirmed in conformity with the preceding section, are declared to be hereditary and transferable ; but, should they escheat [to the Government], the parties possessing a zamindari interest or other proprietary right in the lands will be admitted to engage for the revenue subject to a fresh assessment to be adjusted on the actual assets under the general [law].

4. The principles of sections 2 and 3 of this Regulation shall be considered applicable to all cases of *lakhiraj* resumption under the general Regulations in force, which may come within the favourable rule of assessment contained in the second clause of section 8, Regulation XIX, 1793⁵ in the [States] of

Tenures of *minhadars* so situated declared hereditary and transferable.

Foregoing sections applied to certain *lakhiraj* resumptions.

¹The word "he" in the original text, is to be read as if the word "it" were substituted therefor—see the Amending Act, 1903 (I of 1903).

²See foot-note 4 on page 268, ante.

The words "to the Crown" were substituted for the words "to Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "Government" was substituted for the word "Crown" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

⁴This word was substituted for the word "Regulations" by the Amending Act, 1903 (I of 1903).

⁵The Bengal Revenue-free Lands (Non-Badshahi Grants) Regulation, 1793.

⁶Substituted for the word "Provinces" by para. 4(I) of the Adaptation of Laws Order, 1950.

[Ben. Reg. XIII of 1825.]

(Section 5.)

¹[West Bengal], [Bihar and Orissa] ²* * * * ; it being the evident intention of the rule in question that it should be applied to persons who had been long in possession of the *lakhiraj* tenures made subject to assessment by ³[the Regulation] above cited, and whom it appeared equitable, in consideration of their long possession, to leave in occupancy of the lands composing their respective tenures, at a moderate assessment, not exceeding a moiety of the annual rent produce.

Modifica-
tion of
enactments
relative to
settlement
of resumed
jagir,
altamgha,
*madad-
mash*,
aima
or other
badshahi
grants, and
to resump-
tion of
lakhiraj
tenures.

5. In modification of the existing rules contained in ⁴[Regulation] XXXVII, 1793⁵, ⁶* * * * or any other Regulation in force, relative to the settlement of resumed *jagir*, *altamgha*, *madadmash*, *aima* and other grants of land termed *badshahi* or royal ; and generally in qualification and explanation of all the rules in force relative to the resumption of *lakhiraj* tenures, and the future assessment of lands composing the same, it is hereby further declared that whenever such tenures may be pronounced invalid or extinct by a Revenue Board or other authority empowered to investigate the *lakhiraj* title in such tenures, under the provisions of Regulation II, 1819,⁷ or of any other Regulation in force, it shall be competent to the ⁸[State Government], on a special report of the circumstances of the case, when it may appear just and proper in consideration of the long possession of the actual occupant of the land or of his ancestors, to direct his continuance in possession, though not the *zamindar*, *talukdar* or other *malik* of the land, on his engagement for the future assessment on such terms as may be prescribed ⁹[by the State Government], and in such cases the whole of the provisions contained in sections 2 and 3 of this Regulation shall be deemed applicable, and be maintained by the Courts of Judicature accordingly.

¹Substituted for the word "Bengal" by para. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

²The words and figures "or the second clause of section 8, Regulation XLI, 1795, in the Province of Benares" which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

³These words were substituted for the words "the Regulations," *ibid.*

⁴This word was substituted for the word "Regulations," *ibid.*

⁵The Bengal Revenue-free Lands (Badshahi Grants. Regulation, 1793.

⁶The figures and word "42, 1795, and 36, 1803," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

⁷The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.

⁸See foot-note 4 on page 268, *ante*.

⁹The words "by the Provincial Government" were substituted for the words "by Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was subsequently substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

Bengal Regulation XIV of 1825

(The Bengal Revenue-free Lands Regulation, 1825.)¹

SHORT TITLE GIVEN	....	Act I of 1903.
REPEALED IN PART	...	Act XII of 1873.
		Act XVI of 1874.
REPEALED IN PART AND AMENDED		Act I of 1903.
		(a) The Government of India (Adaptation of Indian Laws) Order, 1937.
ADAPTED	... ..	(b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1947.
		(c) The Adaptation of Laws Order, 1950.

(14th July 1825.)

A Regulation to declare the extent of the authority possessed by the Revenue-authorities, subordinate to the Governor-General in Council, in the confirmation of lakhiraj tenures; to define the principles to be followed in determining on the force and validity of grants made by persons exercising authority in different quarters previously to the acquisition of the country by the British Government * * *

1. Whereas doubts have arisen as to the extent of the authority possessed by the Revenue-authorities subordinate to the Governor General in Council in regard to the confirmation of lakhiraj tenures, which it is expedient to remove ; and it is also desirable further to define the principles to be followed in determining on the force and validity of grants made by persons exercising authority in different quarters, previously to the acquisition of the country by the British Government ; * * *

Preamble.

And whereas it is enacted by clause first, section 26, Regulation II, 1819,² that in suits instituted in the Zila Courts to contest the decisions passed by the Revenue Boards under the provisions of that Regulation, * * * an appeal shall be received by the Sadar Diwani Adalat⁴ * and it appears to be expedient that⁵ * cases wherein the decision of the Court

¹SHORT TITLE.—[This short title was given by the Amending Act, 1903 (I of 1903).]

LOCAL EXTENT.—[This Regulation was passed for the whole of the former Province of Bengal—see the concluding paragraph of sec. 1.]

It has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), sec. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act 1874 (XIV of 1874), sec. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

²Portion repealed by the Amending Act, 1903 (I of 1903), is omitted.

³The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.

⁴The words "on special grounds only," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

⁵The words "the above restriction should not apply to" were repealed, *ibid.*

(Section 2.)

may be opposed to the judgment of the Board of Revenue, or other authority exercising the powers of that Board, ¹* * * should be open to a regular appeal,

the following rules have been enacted, in addition to, and in modification of the provisions of Regulations XIX² and XXXVII³, 1793, ⁴* * * of such parts of ⁵[Regulation] XII, 1805,⁶ as refer to *lakhiraj* lands, and of Regulation II, 1819,⁷ to be in force from the date of their promulgation throughout the ⁸[territories] immediately subject to the Presidency of Fort William.

Lakhiraj
tenures
under
what
circum-
stances
alone
valid.

2. It is hereby declared and enacted that the power of granting *lakhiraj* tenures, namely, tenures of land exempt from the public assessment, either for life or in perpetuity, as well as of confirming such tenures excepting by a regular judgment passed after a judicial inquiry, belongs and always has belonged, exclusively to the Supreme Government; and no act, order or decision granting or confirming any tenure as aforesaid within any of the territories subordinate to this Presidency, after the annexation of such territories to the British dominions, shall be held valid, unless the same shall have been done, issued or passed by or under the immediate directions of the ⁹[State Government] or by some officer expressly authorized by Government to grant or confirm such tenures, or with respect to the confirmation of grants duly authorized by some competent Court of Judicature in a suit regularly tried and decided by it, or by one of the Revenue Boards acting in a judicial capacity, under the rules of Regulation VIII, 1811, whilst that Regulation (rescinded by section 2 of Regulation II, 1819,⁷) was in force; and subsequently under the rules of Regulation II, 1819,⁷

¹The words "but that such cases" which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

²The Bengal Revenue-free Lands (Non-Badshahi Grants) Regulation, 1793.

³The Bengal Revenue-free Lands (Badshahi Grants) Regulation, 1793.

⁴The words and figures "Regulations 41 and 42, 1795, Regulations 31 and 36, 1803," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

⁵This word was substituted for the words and figure "Regulations 8 and," *ibid.*

⁶The Cuttack Land-revenue Regulation, 1805.

⁷The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.

⁸Substituted for the word "Provinces" by para. 3 and the Sixth Schedule of the Adaptation of Laws Order, 1950.

⁹The words "Provincial Government" were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was subsequently substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

of 1825.]

(Section 3.)

or any other Regulation expressly empowering the Revenue Boards, after full investigation of claims to exemption from assessment under the general rules applicable to *lakhiraj* tenures, to pronounce a decision against the assessment, to be considered final, except on proof, in a Court of Judicature, of fraud or collusion in the previous inquiry :

Provided also that no resolution or order passed by ¹* * * the Board of Revenue or other authority exercising the powers of that Board, whereby the right ²[of the Government] to assess any *lakhiraj* lands may have been relinquished or postponed, save and except decisions regularly passed according to the rules above cited, shall operate to the prejudice ²[of the Government] or be held to bar the Revenue-authorities from proceeding for the recovery of public dues under the provisions of Regulation II, 1819, ³ or any other rules in force relative to the resumption of *lakhiraj* tenures held under invalid grants.

3. *First.*—The following principles are to be observed in determining the force and validity of grants made by persons exercising authority in the ⁴[territories] subordinate to this Presidency, previously to the acquisition of the country by the British Government.

Trial of validity of grants.

Second.—*Lakhiraj* tenures of which uninterrupted possession shall have been held exempt from assessment at and subsequently to the periods undermentioned shall be, and be considered to be, valid, without evidence to any formal grant or confirmation of the same, and shall be continued to heirs in cases in which it may be clearly shown, from the nature and denomination of the tenure, that it is hereditary according to the ancient usage of the country, namely, the 12th August, 1765, if the tenure be in ⁵[West Bengal] [*Bihar or Orissa (excepting Cuttack)*]; the 14th October, 1719, if the tenure be in [*Cuttack including*] Pataspur or its dependencies ; ⁶* * * :

Lakhiraj tenures, of which uninterrupted possession has been held, declared valid, etc.

Provided, however, that the above rule shall not apply to cases of derivative tenures, wherein it may appear that the

¹The words "the Lieutenant-Governor and the Board of Commissioners, in the Ceded and Conquered Provinces," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

²The words "of the Crown" were substituted for the words "of Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

³The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.

⁴Substituted for the word "Provisions" by para. 3 and the Sixth Schedule of the Adaptation of Laws Order, 1950.

⁵Substituted for the word "Bengal" by para. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

⁶Portion repealed by the Amending Act, 1903 (I of 1903), is omitted.

(Section 3.)

tenure is derived from a *jagirdar* or other person, who, at any of the periods above specified, held lands free of assessment under a temporary or conditional tenure.

In all such cases the parcels of the land so held shall follow the condition of the principal tenure, and, if that be resumable, will consequently be liable to resumption.

Proof of title to hold or recover *lakhiraj* tenure to rest on claimants,

Third.—The proof of possession in the cases provided for by the preceding clause, and (in the case of persons not the original grantees) of the hereditary nature of the tenure, shall be on the parties claiming to hold or recover the *lakhiraj* tenure; the general principle being that the ruling Power is entitled to a certain proportion of the produce of every *bigha* of land, excepting so far as it shall have transferred, relinquished or compounded its right thereto: and all parties claiming the benefit of such exemptions being bound to establish their respective claims and titles:

One or more successions before period specified not to establish title of inheritance.

Fourth.—Provided also that, although one or more successions to any tenure as aforesaid may have taken place before the periods specified in the second clause, the fact shall not be taken to establish a title of inheritance, unless the tenure be clearly of an hereditary nature, or unless the right of inheritance therein shall have been admitted by the ¹[State Government] on a reference made to Government according to the rules in force applicable to such cases.

Potentates and authorities recognizable by Courts, etc.

Fifth.—The Courts of Judicature and Revenue-authorities shall not recognise any potentate or person as having been vested with the supreme power within any part of the ²[territories] subordinate to this Presidency, save and except the Kings of Delhi, the *Subadars* of ³[West Bengal], Bihar and Orissa, and the several authorities specified in ⁴* ⁵[Regulation] XII, 1805⁶, ⁷* * *.

If in any case grants shall be produced purporting to have been made or confirmed by any other person than as aforesaid, alleged to have been vested with the supreme power for the time being,

¹See foot-note 9 on page 272, *ante*.

²Substituted for the word "Provinces" by para. 3 and the Sixth Schedule of the Adaptation of Laws Order, 1950.

³Substituted for the word "Bengal" by para. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

⁴The words and figures "Regulation XLII, 1795, Regulation XXXVI, 1803, and" which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

⁵This word was substituted for the words and figure "Regulations 8 and", *ibid*.

⁶The Cuttack Land-revenue Regulation, 1805.

⁷Portion repealed by the Amending Act, 1903 (I of 1903), is omitted.

(Section 3.)

and it shall appear to the Court or other authority investigating the same that the plea is well founded, the Court or other authority before whom the case may be pending shall, before passing any decision thereupon, refer the point to the ¹[State Government] and be guided by ²[its] determination.

Sixth.—To the validity of grants made or confirmed by the Kings of Delhi or by any of the Rulers aforesaid, it is and shall be held to be necessary—

Conditions requisite to establish validity of grants by such potentates, etc.

- 1st, that they were made or confirmed within the period during which the person granting or confirming the same possessed and exercised supreme power within the territory in which the lands specified in the grant are situate :
- 2nd, that the grantee actually and *bona fide* obtained possession of the land granted within the said period :
- 3rd, that the grant was not subsequently resumed by the officers or the orders of the Government for the time being previously to the acquisition of the country by the British Government, or, if so resumed, that the competence of the officer to resume shall have been expressly disallowed by the ¹[State Government].

Seventh.—The following shall be held, for the purposes specified in this Regulation, to be the periods at which the several ³[territories] subordinate to this Presidency were acquired by the British Government, namely, for ⁴[West Bengal], [Bihar and Orissa (excepting Cuttack)], the 12th August, 165 ; ⁵* * * for [the Province of Cuttack], Pataspur and its dependencies, the 14th October, 1803⁵ * * * .

Periods at which territories subordinate to Presidency of Fort William were acquired by British Government.

Eighth.—To the validity of grants not made or confirmed by the Supreme Power (excepting tenures of long possession described in the second clause of this section), it shall be held to be necessary—

Conditions necessary to validity of grants not made or confirmed by Supreme Power.

- 1st, that they were made or confirmed by some authority which the ¹[State Government] shall have expressly declared competent to make or confirm the same ;

¹See foot-note 9 on page 272, *ante*.

²The word "his" in the original text is to be read as if the word "its" were substituted therefor—see the Amending Act, 1903 (I of 1903) of the Adaptation of Laws Order, 1950.

³Substituted for the word "Provinces" by para. 3 and the Sixth Schedule

⁴See foot-note 3 on page 274, *ante*.

⁵Portion repealed by the Amending Act, 1903 (I of 1903), is omitted.

(Sections 4—6.)

2nd, that the grantee actually and *bona fide* obtained possession of the land granted, and that the revenue of the land was not subsequently resumed by competent authority.

Decision of questions regarding *lakhiraj* tenures, resumed previously to acquisition of country by State Government.

Ninth.—Provided also that in cases in which any *lakhiraj* tenure may have been resumed previously to the acquisition of the country by the British Government, the determination of the question whether the officer by whom or by whose order the resumption may have been made was legally competent to do so shall, in all cases wherein it may be necessary to determine this question, rest with the ¹[State Government].

Moreover, all questions touching the validity of grants made or confirmed by any officer subordinate to the Supreme Power, or the legal effect of resumption by any such officer which may not have been expressly provided for by the Regulations, and which may be material to the decision of any suit or inquiry, shall be referred by the Courts of Judicature or other authorities making the investigation to the ²[State Government] for determination unless the powers and competence of the officer in question shall have been previously determined ³[by the State Government].

Saving of lands devoted to religious or charitable uses.

4. Nothing in this Regulation shall be construed to affect the provisions contained in Regulation XIX, 1793,³ ⁴* * * and Regulation XII, 1805,⁵ relative to lands not exceeding ten *bighas* of which the produce is *bona fide* appropriated to religious or charitable uses.

5. [*Revision of decisions passed before commencement of Regulation.*].—*Rep. by the Repealing Act, 1873 (XII of 1873).*

Modification of Regulation II, 1819, section 26.

6. In modification of the rules contained in section 26, Regulation II, 1819⁶ it is hereby enacted that in cases wherein a Zila Court shall annul or alter a judgment passed by the Board of Revenue or other authority exercising the powers of that Board under the provisions of the abovementioned Regulation, a regular appeal shall lie⁷* *

¹See foot-note 9 on page 272, *ante*.

²The words "by the Provincial Government" were substituted for the words "by Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937. and the word "State" was substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

³The Bengal Revenue-free Lands (Non-Badshahi Grants) Regulation, 1793.

⁴The words and figures "Regulation 41, 1795, Regulation 31, 1803" which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

⁵The Cuttack Land-revenue Regulation, 1805.

⁶The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.

⁷Portion repealed by the Repealing Act, 1874 (XVI of 1874), is omitted.

of 1825.]

(Section 6.)

The provisions of the abovementioned section shall however still be applicable to cases in which the Zila ¹* * * Courts may maintain the decisions of the ²[Board of Revenue] or other authorities exercising the power of ²[that Board]

¹The words "or Provincial" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

²The words "Board of Revenue" and "that Board" were substituted for the words "Revenue Boards" and "these Boards," respectively, by the Amending Act, 1903 (I of 1903).

Bengal Regulation III of 1827

(The Bengal Corruption and Extortion Regulation, 1827.)¹

SHORT TITLE GIVEN	Act V of 1897.
REPEALED IN PART	Act XVI of 1874. Act XII of 1876.
AMENDED ...	Act I of 1903.
ADAPTED ...	The Adaptation of Laws Order, 1950.

(1st November 1827.)

A Regulation for modifying and amending the rules in force relative to the law officers and ministerial^{2} officers of the Courts of Judicature, who may be guilty of corruption or extortion.*

I to 4. [Preamble; amendments; no fine to be awarded in Civil Court for corruption or extortion; criminal prosecution not to depend on civil action.]—Rep. by the Repealing Act, 1874 (XVI of 1874).

5. From and after the date of this Regulation, it shall not be necessary for any party from whom money or property may have been corruptly taken or extorted to institute a civil action for the recovery thereof; but, on proof of the charge in a criminal prosecution for those offences, a certified copy of the conviction by ³[the Court] shall be received as sufficient authority for enforcing the refund of the amount or value so taken, with interest, on application to that effect being preferred by the aggrieved party to the Civil Court, ⁴* * * * *

Record of criminal conviction sufficient for compelling refund of property corruptly taken or extorted.

6. [Amount of embezzlement to be paid in first instance from public treasury.]—Rep. by the Repealing Act, 1874 (XVI of 1874).

¹SHORT TITLE.—This short title was given by the Amending Act, 1897 (V of 1897).

LOCAL EXTENT.—This Regulation (sec. 5) has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), sec. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), sec. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

²The word "Native" was omitted by para. 3 and the Sixth Schedule of the Adaptation of Laws Order, 1950.

³These words were substituted for the words "a Court of Circuit or the Nizamat Adalat" by the Amending Act, 1903 (I of 1903).

⁴The words "on the stamped paper prescribed for miscellaneous petitions" which were repealed by the Repealing Act, 1876 (XII of 1876), are omitted.

Bengal Regulation V of 1827

(The Bengal Attached Estates Management Regulation, 1827.)¹

SHORT TITLE GIVEN	...	Act V of 1897.
REPEALED IN PART	...	Act XVI of 1874.
REPEALED IN PART AND AMENDED		Act I of 1903.

(27th December 1827.)

A Regulation for modifying the rules at present in force for the management of estates under attachment by orders of the Courts of Justice in certain cases.

1. Whereas it is expedient in all cases of the attachment of landed property under orders of the Courts of Justice that the management of the estate attached should be placed under the superintendence of the Collectors of land-revenue, the following rules have been enacted by the Governor-General in Council, to be in force, from the date of their promulgation, throughout the territories immediately subject to the Presidency of Fort William.

Preamble.

2. The rules contained in sections 5 and 6, Regulation V, 1799², 8* * * regarding the administration and management of estates under orders of the Zilá⁴* * Courts, are hereby declared subject to the following modifications.

Modification of Regulation regarding management of estates under attachment. Issue of precept for holding estates under attachment and for appointing managers.

3. Whenever the Zila⁴* * Courts may deem it just and proper, under the provisions of the ⁵[Regulation] above mentioned, to provide for the administration or management of landed property, the Court shall issue a precept to the Collector of land-revenue of the district wherein the estate may be situated, directing him to hold the estate in attachment, and to

¹SHORT TITLE.—This short title was given by the Amending Act, 1897 (V of 1897).

LOCAL EXTENT.—This Regulation was passed for the whole of the former Province of Bengal—see sec. 1.

It has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), sec. 66, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), sec. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

²The Bengal Wills and Intestacy Regulation, 1790.

³The words and figures "and clauses 5 and 6, section 16, Regulation III, 1803," and "and sections 26 and 27, Regulation V, 1812, and clause Third, section 5, Regulation VI, 1813," which were repealed by the Amending Act, 1903 (I of 1903), and the Repealing Act, 1874 (XVI of 1874), respectively, are omitted.

⁴The words "and City" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

⁵This word was substituted for the words "several Regulations" by the Amending Act, 1903 (I of 1903).

[Ben. Reg. V of 1827.]

(Section 4.)

appoint a person for the due care and management of the estate, under good and adequate security for the faithful discharge of the trust, in a sum proportionate to the extent thereof :

Provided, however, that if any person holding an interest in the estate shall be dissatisfied with the selection made by the Collector of the individual to perform the duty in question, or with the conduct of the manager at any time after his appointment, it shall be competent to such person to represent his objections to the Board of Revenue, and the Board will either confirm the manager chosen, or order the Collector to appoint another person, as on consideration of the circumstances of the case may appear reasonable and proper.

4. The precept of the Zila ¹* * Court above mentioned shall state specifically the property to be included in the attachment, and the attachment shall not be withdrawn without a further precept from the Court to that effect.

Precept to
state
property
included
in attach-
ment.

¹The words "or City" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

Bengal Regulation III of 1828

[The Bengal Land-revenue assessment (Resumed Lands) Regulation, 1828.]¹

SHORT TITLE GIVEN	...	...	Act I of 1903.
REPEALED IN PART	...	...	Act XII of 1873.
			Act XVI of 1874.
			Ben. Act I of 1905.
REPEALED IN PART AND AMENDED	...	...	Act I of 1903.
ADAPTED	...	...	(a) The Government of India (Adaptation of Indian Laws) Order, 1937.
			(b) The Adaptation of Laws Order, 1950.

(12th June 1828.)

*A Regulation for * * * more effectually securing the
realisation of the public dues.*

1. * * * it appears to be expedient * * * to provide that all successions to the possession of land or rent, free of assessment, whether by sale, gift or inheritance, shall be regularly reported to the Revenue-authorities ; Preamble.

it has likewise appeared to be expedient and proper to make provision for the immediate settlement of the limits of the Sundarbans, as ascertained by careful local inquiry, conducted by the Commissioner specially appointed to the duty, and the surveyors under his authority ; and also to declare the intent and meaning of certain parts of the existing Regulations in regard to which doubts have arisen ;

the following rules have accordingly been enacted, to be in force from the date of their promulgation throughout the ⁴[territories] immediately subordinate to the Presidency of Fort William.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Regulation was passed for the whole of the former Province of Bengal—see the concluding paragraph of sec. 1.

It has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), sec. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), sec. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

²Words in the title which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

³Portions of sec. 1 were repealed, *ibid.*

⁴Substituted for the word "Provinces" by the para. 3 and the Sixth Schedule of the Adaptation of Laws Order, 1950.

[Ben. Reg. III

(Sections 2—10.)

2 to 8. [Special Commissioners for final determination of cases investigated under the Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819 (II of 1819), ss. 5 to 20, and the Bengal Land-revenue Settlement Regulation, 1825 (IX of 1825), s. 5, and for determination of suits brought to contest the demand of Revenue-officers.]—Rep. by the Amending Act, 1903 (I of 1903).

9. [Oaths to be taken by special Commissioners.]—Rep. by the Repealing Act, 1873 (XII of 1873).

10. First.—The following rules are hereby enacted in modification and extension of the provisions contained in sections 22, 23, 24, Regulation II, 1819,¹

Second.—All decisions which have been or may be passed by the ²[Board] of Revenue under the rules in section 21, Regulation II, 1819,¹ declaring the liability to assessment of lands ³* * * shall be carried into immediate execution by the Collectors or other local Revenue-officers of such district, notwithstanding that the parties against whom such decisions may have been or may be passed shall have sued or shall sue to contest the Board's decision in one of the established Courts of Justice ⁴* * * ; and such parties shall not be permitted to retain possession of the lands unless they enter into an engagement to pay the assessment which may be fixed upon them; such assessment to be collected under the general rules for the realization of the Government revenue from farmers thereof.

And if any person against whom the Board may have decided shall decline to pay the assessment fixed on the lands, he shall be forthwith dispossessed, and such arrangements shall be made for the collection of the Government revenue as the Collector, under the orders of the Board, may see fit to adopt; but in the event of a final decision being passed, exempting the tenure of any such person from assessment, the net collections made on account of Government shall be refunded, with interest thereon at the rate of six per cent. per annum.

¹The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.

²This word was substituted for the word "Boards" by the Amending Act, 1903 (I of 1903).

³The words "whether the same be situated in districts to which the jurisdiction of a special Commissioner has been extended or in any other district," were repealed, *ibid*.

⁴The words "or to the Commissioner appointed under this Regulation" were repealed, *ibid*.

Regulation II, 1819, modified and extended.

Decisions of Board of Revenue under section 21 of Regulation II, 1819, to be executed notwithstanding suit to contest them.

Consequence of declining to pay assessment[†].

of 1828.]

(Section II.)

Third.—All suits which may be instituted in the established Courts of Justice under the provisions of sections 22 and 24, Regulation II, 1819,¹ and section 5, Regulation IX, 1825,² to contest decisions of the ³[Board] of Revenue shall, when the jurisdiction of the above Courts is not barred by the operation of this Regulation, be heard and determined in the same manner as regular appeals, and no further pleadings shall be required or received in such cases than the objections of the appellant to the decision of the Board and the reply to those objections on the part of the Revenue-authorities ;

Trial of suits to contest Board's decision in cases in which jurisdiction of Courts is not barred.

the said Courts shall likewise, on the admission of an appeal, invariably call for the original record of the Board's proceedings in each case, and shall then require the parties to file their pleadings as above provided ; but it shall not be competent to the Courts to take further evidence, oral or documentary, unless it shall appear that such evidence was tendered by the party adducing it to the Collector or the Board, and was then rejected on insufficient grounds or that such evidence is essential to the ascertainment of some fact material to the issue, which may not have been fully inquired into in the course of the previous investigation.

Fourth.—Provided, however, and it is hereby enacted, that nothing contained in the preceding clause shall be construed to bar the admission of a further appeal on the part of the Revenue-authorities to 4* * * the Court of *Sadar Diwani Adalat*, from decisions passed in the first instance in the *Zila* 5* * * Courts 6* * * in cases of the nature described and specially provided for in section 6, Regulation XIV, 1825⁷ nor the admission by those tribunals of the special appeal on the application of the party opposed to Government under the rules in section 26, Regulation II, 1819¹.

Proviso as to admission of appeals from inferior to superior Courts.

Fifth.—Appeals filed in the established Courts of Civil Judicature to contest decisions of the Board of Revenue shall be kept on a file or register distinct from that on which other suits before those Courts are entered⁸ * * *

Appeals from Board's decisions to be kept distinct.

II. *First.*—[Provisions for securing information of transfers of land held free of assessment.]—*Rep. by the Repealing Act, 1874 (XVI of 1874).*

¹The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.

²The Bengal Land-revenue Settlement Regulation, 1825.

³This word was substituted for the word "Boards" by the Amending Act, 1903 (I of 1903.)

⁴The words "the Provincial Courts or" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

⁵The words "or the Provincial" were repealed, *ibid.*

⁶The word "respectively," was repealed, *ibid.*

⁷The Bengal Revenue-free Lands Regulation, 1825.

⁸The remainder of sec. 10, *Fifth*, which was repealed by the Repealing Act, 1874 (XVI of 1874), is omitted.

(Section 12.)

Persons succeeding to possession of lands revenue-free or on *mukarrari jama* to report to Collector.

Second.—Persons succeeding to the possession of any lands held free of assessment or held on a *mukarrari jama*, on the decease of a former occupant, or by gift, purchase or other assignment or transfer of proprietary right, are hereby required immediately to notify the same to the Collector or other officer exercising the powers of Collector within the district in which the land may be situated, and any omission to notify such succession or transfer for a period of six months or more shall subject such land to immediate attachment by the Revenue-officers.

Nor shall land so attached be restored to the party who may claim to hold it, though the validity of the tenure be subsequently established to the satisfaction of the Revenue authorities, until such party shall have paid to ¹[the State Government] a fine equal to one year's rent ; and, if the revenue derivable from the land be not awarded to be the right of the individual, the party shall further be required to refund the amount of the collections made by him, with interest thereon at the rate of twelve *per cent. per annum* : provided also that the said rent and collections shall be estimated according to the assessment demandable from the *raiya*s at the time of attachment.

Investigation of claims to recover possession of attached lands.

Third.—Where the lands of any individual may be attached under the above rule, any claim which he may prefer to recover possession thereof, and to hold the same free of assessment or on a *mukarrari jama*, shall be investigated and determined by the Collector under the provisions of Regulation II, 1819², as modified by the present Regulation and by those which have been immediately enacted.

Unregistered tenures liable to resumption unless declared hereditary by decree of competent authority.

12. All tenures which may not have been duly registered in the manner prescribed by the Regulations, or of which the specification contained in the register shall not purport the same to be held under an hereditary title or as a perpetual endowment, shall be and be held to have been liable to resumption, unless the same may have been declared hereditary by a final decree of a competent Court of Judicature, on the demise of the persons who were in possession at the dates respectively of Regulations XIX³ and XXXVII⁴, 1793, ⁵* * * and XII,

¹The words "the Provincial Government" were substituted for the word "Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was subsequently substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.

³The Bengal Revenue-free Lands (Non-Badshahi Grants) Regulation, 1793.

⁴The Bengal Revenue-free Lands (Badshahi Grants) Regulation, 1793.

⁵The words and figures "Regulations 41 and 42, 1795, Regulations 31 and 36, 1803, Regulation 8" which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

of 1828.]

(Section 13.)

1805¹, according as the lands may be within the districts to which those Regulations are severally applicable or in other parts of the country at the date at which the same came into the possession of the British Government.

And Collectors and other officers exercising the powers of Collector shall accordingly proceed to assess, and, if necessary, attach all lands liable to resumption as above, in the same manner and with the same powers as they are authorized and required to proceed in the case of a lapsed farm, anything in the existing Regulations to the contrary notwithstanding :

Provided further that the nature and extent of the interests vested in the holders of lands and rents exempted from assessment shall, when the title-deeds are forthcoming, and their authenticity recognized, be construed and defined with reference to the whole of the matter contained in such deeds, and not merely by the designation of the tenure. *Jagirs* consequently shall not be held to be life-tenures in cases in which the recital of the grant shall be such as clearly to convey an hereditary interest : nor shall any tenures, howsoever designated, be considered to be hereditary and perpetual if the grants under which they are held shall not convey, in express terms, an hereditary or perpetual interest.

13. *First*.—The uninhabited tract known by the name of the Sundarbans has ever been, and is hereby declared still to be, the property of the State : the same not having been alienated or assigned to *zamindars*, or included in any way in the arrangements of the perpetual settlement, it shall therefore be competent to the ¹[State Government] to make, as heretofore, grants, assignments and leases of any part of the said Sundarbans, and to take such measures for the clearance and cultivation of the tract as ²[it] may deem proper and expedient.

Sundarbans declared property of State and Government competent to make grants and to take measures for its clearance.

All parties to whom such grants, leases or assignments shall have been made, or to whom they may hereafter be made, shall be entitled to hold or to take possession of any tract of Sundarban jungle so granted or assigned without question or opposition and all public officers shall aid and assist the same :

Grantees' right.

Provided also that if any *zamindar*, *talukdar* or other *sadar malguzar* or any other person owning and occupying or collecting the rent or revenue of cultivated land in the neighbourhood of the land so granted, leased or assigned shall sue in any Court

Suit to contest such right.

¹The Cuttack Land-revenue Regulation, 1805.

²The words "Provincial Government" were substituted for the words "Local Government" by paragraph 4(I) of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was subsequently substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

³The word "he" in the original text, is to be read as if the word "it" were substituted therefor—see the Amending Act, 1903 (I of 1903).

[Ben. Reg. III of 1828.]

(Section 13.)

of Adalat ¹ * * * to contest the validity of the title or the right of possession of any such lessee or grantee under such grant, lease or assignment, then if the land aforesaid shall be proved to be, or to have been, or be not denied to be or to have been, when so granted, leased or assigned, within the limit of the unoccupied jungle so named and described, the suit shall be dismissed with costs :

Compensation to zamindar claiming valuable interest.

Provided, however, that if any zamindar, talukdar or other person aforesaid shall claim to possess a valuable interest in any part of the Sundarbans, by virtue of authority to collect money or other valuable thing from the persons engaged in gathering wax, or cutting wood or obtaining other jungle products of the tract, or by virtue of any other similar privilege or advantage which may have been recognized as part of the assets on which the assessed revenue of his zamindari, talukdari or other tenure was adjusted at the time of farming the perpetual settlement of the district, and the collection of which was not subsequently stopped and due compensation made under the rules relative to the collection of sair revenue or other similar arrangement; such zamindar, talukdar or proprietor shall be entitled to receive ²[from the State Government] compensation for any diminution in the value of such interest and advantage consequent on the arrangements adopted for the cultivation of the Sundarbans; the same being duly established after an investigation conducted under the rules of Regulation II, 1819³, as modified by this Regulation.

Second.—[Demarcation of boundaries of the Sundarban jungle.]—Rep. by the Sundarbans Act, 1905 (Ben. Act I of 1905).

¹The words "or before a special Commissioner under this Regulation," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

²The words "from the Provincial Government" were substituted for the words "from Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was subsequently substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

³The Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819.

Bengal Regulation IV of 1828

(The Bengal Land-revenue Settlement Regulation, 1828.)¹

SHORT TITLE GIVEN	...	Act I of 1903.
REPEALED IN PART	...	{ Ben. Regn. IX of 1833. Act XVI of 1874.
REPEALED IN PART AND AMENDED		{ Act I of 1903. Ben. Act I of 1939.
ADAPTED	...	(a) The Government of India (Adaptation of Indian Laws) Order, 1937. (b) The Adaptation of Laws Order, 1950.

(7th August, 1828.)

2*

1. [Preamble].—Rep. by the Amending Act, 1903 (I of 1903).

2. First, Second, Third.—[Collectors making or revising settlements empowered to try all questions of property in or possession of lands.]—Rep. by the Bengal Land-revenue (Settlement and Deputy Collectors) Regulation, 1833 (IX of 1833).

Fourth.—To prevent doubts as to the period for which Collectors and other officers³ [vested with the powers of a Collector] are to possess the powers vested in them⁴ * * * by Regulation VII, 1822⁵, in regard to any *mahals* of which the settlement may have been, or may be about to be made or revised, it is hereby declared and enacted that they shall be held and considered to be engaged in making and revising such settlement from the date on which they have issued or may issue orders for adjusting the boundaries, for measuring any of the lands or for making a census of the inhabitants of any village or portion of a village belonging to such *mahal*, of which intimation shall be given to the Magistrate or Joint Magistrate within whose division the village shall be situated, up to the day on which they may be informed that the settlement, as made and

Period during which Collectors are to be considered to be engaged in making and revising settlements.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—Section 2(f) of this Regulation has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), sec. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

Section 2(f) has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), sec. 3, to be in force in the following Scheduled Districts, namely:—

West Jalpaiguri, in the Jalpaiguri district; and
the Western Hills and the Tarai, in the Darjeeling district.

²The long title which was repealed by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939), is omitted.

³These words were substituted for the word "aforesaid" by the Amending Act, 1903 (I of 1903).

⁴The words "by this Regulation and" were repealed, *ibid*.

⁵The Bengal Land-revenue Settlement Regulation 1822.

[Ben. Reg. IV of 1828.]

(Section 2.)

revised by them, has been finally confirmed ¹[by the State Government]

During the aforesaid period ²* * Magistrates and Joint Magistrates ³* * * shall be guided, in respect to such *mahals*, by the provisions of clause *Second*, section 34, Regulation VII, 1822⁴, by which they were required to refer to the Revenue-authorities disputes regarding lands, premises, crops, watercourses and the like.

And all police-officers are required to give immediate and efficient support to Collectors and other Revenue-officers in the execution of their duties.

¹The words "by the Provincial Government" were substituted for the words "by Government" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was subsequently substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

²The words "the powers vested in" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

³The words and figures "by Regulation XV, 1824, shall be suspended in regard to all *mahals* of which the settlement may be so in progress, and the said officers" were repealed, *ibid*.

⁴The Bengal Land-revenue Settlement Regulation, 1822.

Bengal Regulation I of 1829

(The Bengal Revenue Commissioners Regulation, 1829.)¹

SHORT TITLE GIVEN	...	...	Act I of 1903,
REPEALED IN PART	...	...	{ Ben. Regn. VI of 1931. Ben. Regn. X of 1931. Act XVI of 1874. Act I of 1903,
ADAPTED	...	...	{ (a) The Government of India (Adaptation of Indian Laws) Order, 1937. (b) The Adaptation of Laws Order, 1950.

(1st January, 1829.)

A Regulation for constituting Commissioners of Revenue and Circuit * * *

Preamble.

1. The system in operation for superintending the magistracy and the police, and for controlling and directing the executive Revenue-officers, who in several cases are also Magistrates, has been found to be defective.

The Provincial Courts of Appeal and Circuit, as now constituted, partly from the extent of country placed under their authority, and partly from their having to discharge the duties of both civil and criminal tribunals, have, in many cases, failed to afford that prompt administration of justice which it is the duty of Government to secure for the people.

The gaol-deliveries have been, in some instances, delayed beyond the term prescribed by law, [*especially in the division of Bareilly, which comprises thirteen stations at which gaol-deliveries have to be held, beside the joint magistracies of Bila and Sirpura,*] and a great arrear of cases under appeal has accrued in all the Courts, to the manifest injury of many individuals and to the encouragement of litigation and crime.

The Judges of Circuit, when employed singly in the districts under their authority, do not possess sufficient powers, nor have they the opportunity of acquiring sufficient local knowledge, to enable them adequately to control the police or protect the people.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Regulation was passed for the whole of the former Province of Bengal—see the concluding paragraph of sec. 1.

It has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), sec. 6, to be in force throughout the former Province of Bengal except as regards the Scheduled Districts.

It has been declared by notification under the Scheduled Districts Act, 1874 (XIV of 1874), sec. 3, to be in force in the following Scheduled Districts, namely:—

West Jalpaiguri, in the Jalpaiguri district; and
the Western Hills, the Tarai and the Dumson Subdivision, in the Darjeeling district:

²The rest of the title was repealed by the Amending Act, 1903 (I of 1903), and is omitted,

(Section 2.)

The great extent of country under each of the Boards of Revenue has similarly operated to impede them in the execution of the duties which belong to them as tribunals for the determination of all questions relative to the assessment of lands under settlement and for the judicial decision of many other important cases, as the general guardians of the fiscal interests of the State, as directors and superintendents over the executive officers, and as the confidential advisers of Government.

For the correction of the above defects, it has appeared to be expedient and necessary to place the magistracy and police, and the Collectors and other executive Revenue-officers under the superintendence and control of Commissioners of Revenue and Circuit, each vested with the charge of such a moderate tract of country as may enable them to be easy of access to the people, and frequently to visit the different parts of their respective jurisdictions; to confide to the said Commissioners the powers * * * that belong to the Boards of Revenue, to be exercised, with the modifications hereinafter provided, * * * under the instructions and control of a Sadar or Chief Board of Revenue, * * *.

With the above views and purposes the Governor General in Council has enacted the following rules to be in force from the 1st Mach, 1829, throughout the ³[territories] immediately subject to the Presidency of Fort William.

2. A Commissioner of Revenue and Circuit shall be appointed for each of the under-mentioned divisions :

Provided, however, that ³* * * it shall be competent to the ⁴[State Government by an order], to transfer any district or districts from one division to another, and to increase or reduce the number of Commissioners, if such a measure shall appear to be necessary or expedient; due notice of any such arrangement being given by public proclamation.

[10th Division, to contain the districts under the Magistrates, Collectors, Joint-Magistrates and Sub-Collectors of]				Saran, Shahabad and Tirhut.
11th	ditto	ditto	of	{ Patna, Bihar and Ramgarh. }
12th	ditto	ditto	of	{ [Bhagalpur, Monghyr,] Malda [and Purnea.] }

¹Portions repealed by the Amending Act, 1903 (I of 1903), are omitted.

²Substituted for the word "Provinces" by para. 3 and the Sixth Schedule of the Adaptation of Laws Order, 1950.

³The words "subject to the provisions of section 246 of the Government of India Act, 1935," which were inserted by para. 3 and Schedule XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, were omitted, *ibid.*

⁴The words "Provincial Government by an Order" were substituted for the words "Governor General in Council, by an order in Council" by para. 3 and Schedule XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was subsequently substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

Appoint-
ment of
Commis-
sioners of
Revenue
and
Circuit
for
divisions
specified.

of 1829.]

(Sections 3, 4.)

13th Division, to contain the districts under the Magistrates, Collectors, Joint-Magistrates and Sub-Collectors of	...	...	...	{ Dinaipur, Rangpur, Rajshahi and Bogra.
14th ditto ditto of				{ Murshidabad, Birbhum and Nadia.
15th ditto ditto of				{ Dacca, ¹ Jalalpur, ¹ Tippura and Mymensingh.
16th ditto ditto of				{ Chittagong and Noakhali. * *2
18th ditto ditto of	...			{ Backergunge, Jessore, Suburbs of Calcutta, 24-Parganas and Barasat.
19th ditto ditto of	...			{ [Cuttack, Khurda, Balasore,] Midnapore and Nagwan, including Hijli.
20th ditto ditto of	...			{ Burdwan, Jungle Mahals and Hooghly.

3. [Commissioners invested with powers of Judges of Circuit and Courts of Circuit collectively; period of holding sessions, etc.]—*Rep. by the Repealing Act, 1874 (XVI of 1874).*

4. First.—The said Commissioners shall, until otherwise specially provided for by law, possess and exercise within the several districts comprised in their respective divisions the powers and authority now vested in the Boards of Revenue and Courts of Wards, subject to the control and direction of a *Sadar* or Head Board, to be ordinarily stationed at the Presidency, unless otherwise directed by the ⁴[State Government], and to such restrictions and provisions as the ⁴[State Government] or the said *Sadar* Board; with ⁵[its] authority or sanction, may prescribe.

Commissioners to have powers of Boards of Revenue and Courts of Wards.

¹The City of Dacca and the *Zila* of Dacca Jalalpur were amalgamated as the district of Dacca by Ben. Reg. V of 1833, which was repealed by the Laws Local Extent Act, 1874 (XV of 1874).

²The words "To be placed under the officer appointed to control the affairs of Arakan", which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

³Portion repealed by the Amending Act, 1903 (I of 1903), is omitted.

⁴The words "Provincial Government" were substituted for the words "Governor General in Council" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was subsequently substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

⁵This word was substituted for the word "his" by paragraph 5(2) of the Government of India (Adaptation of Indian Laws) Order, 1937,

[Ben. Reg. I of 1829.]

(Sections 5—10.)

Sadar Board and Commissioners how guided as to form of their revenue proceedings.

Second.—In regard to the form of their proceedings in the Revenue Department, the Commissioners and the Sadar Board shall be guided by such orders as the ¹[State Government] may from time to time issue, and it shall be competent to the ¹[State Government] to fix the stations at which the Board and the Commissioners, when not employed on the duties of circuit, shall reside, at such places within the territories belonging to this Presidency as may from time to time be deemed expedient.

When tract within jurisdiction of Magistrate of one division is under Collector of another division.

Third.—Provided also that, in cases in which any tract of country that belongs to the jurisdiction of a Magistrate or Joint Magistrate of one division may be under the authority of a Collector or Deputy Collector attached to another division, the ¹[State Government] shall determine, ²[by order], the nature and extent of the powers to be exercised in regard to the revenue affairs of such tract by the Commissioners respectively with whose divisions it may be so jointly connected.

5. [*Abolition of powers of certain Provincial Courts of Appeal.*]*—Rep. by the Repealing Act, 1874 (XVI of 1874).*

6. [*Repeal of inconsistent provisions.*]*—Rep. by the Amending Act, 1903 (I of 1903).*

7, 8. [*Offices of Superintendents of Police abolished; Commissioners to perform duties of Superintendents; tender of pardon to accomplices; Powers of Commissioner of Cuttack and Midnapore.*]*—Rep. by the Amending Act, 1903 (I of 1903).*

9. *First.*—[*Powers of Commissioners of Arakan and Assam.*]*—Rep. by the Amending Act, 1903 (I of 1903).*

Second.—[*Conferment of powers on the Commissioner for the districts of the Northern Doab, etc.*]*—Rep. (except in certain Scheduled areas) by the North - Western Provinces Land-revenue Act, 1873 (XIX of 1873). (Conferment of powers on the Resident at Delhi.)—Rep. in part by Ben. Reg. VI of 1831 ; residue rep. by Ben. Reg. X of 1831.*

10. [*Abolition of office of mufassal special Commissioner; modification of practice under Regs. I of 1821 and I of 1823.*]*—Rep. by the Amending Act, 1903 (I of 1903).*

¹See foot-note 4 on page 293. *ante*.

²These words were substituted for the words "by an order in Council" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937.

Bengal Regulation XVII of 1829

(The Bengal Sati Regulation, 1829.)¹

SHORT TITLE GIVEN	...	...	Act V of 1897.
REPEALED IN PART	...	...	Act XVII of 1862.
ADAPTED	...	...	The Adaptation of Laws Order, 1950.

(4th December, 1829.)

A Regulation for declaring the practice of sati or of burning or burying alive the widows of Hindus illegal and punishable by the Criminal Courts.

1. The practice of *sati* or of burning or burying alive the widows of Hindus is revolting to the feelings of human nature ; it is nowhere enjoined by the religion of the Hindus as an imperative duty ; on the contrary, a life of purity and retirement on the part of the widow is more especially and preferably inculcated, and by a vast majority of that people throughout India the practice is not kept up nor observed : in some extensive districts it does not exist ; in those in which it has been more frequent it is notorious that in many instances acts of atrocity have been perpetrated which have been shocking to the Hindus themselves and in their eyes unlawful and wicked. Preamble.

The measures hitherto adopted to discourage and prevent such acts have failed of success, and the Governor General in Council is deeply impressed with the conviction that the abuses in question cannot be effectually put an end to without abolishing the practice altogether.

Actuated by these considerations, the Governor General in Council, without intending to depart from one of the first and most important principles of the system of ^{2*} Government in India, that all classes of the people be secure in the observance of their religious usages, so long as that system can be adhered to without violation of the paramount dictates of justice and humanity, has deemed it right to establish the following rules, which are hereby enacted to be in force from the time of their promulgation throughout the territories immediately subject to the Presidency of Fort William.

¹SHORT TITLE.—This short title was given by the Amending Act, 1897 (V of 1897).

LOCAL EXTENT.—This Regulation was passed for the whole of the former Province of Bengal—see the concluding paragraph of sec. 1.

It has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), sec. 6, to be in force throughout the former Province of Bengal except as regards the Scheduled Districts.

It has been declared by notification under the Scheduled Districts Act, 1874 (XIV of 1874), sec. 3, to be in force in West Jalpaiguri and the Western Duars, in the Jalpaiguri district.

²The word "British" was omitted by para. 3 and the Sixth Schedule of the Adaptation of Laws Order, 1950.

(Sections 2, 3.)

Sati
declared
illegal
and
punish-
able.

2. The practice of *sati* or burning or burying alive the widows of Hindus is hereby declared illegal and punishable by the Criminal Courts.

Zamin-
dars,
etc.,
respon-
sible for
immediate
commu-
nication to
police of
intended
sacrifice.

3. *First*.—All *zamindars*, *talukdars* or other proprietors of land, whether *malguzari* or *lakhiraj*, all *sadar* farmers and under-renters of land of every description, all dependent *talukdars*, all *naibs* and other local agents, all ¹* officers employed in the collection of the revenue and rents of lands on the part of Government or the Court of Wards and all *Mandals* or other headmen of villages, are hereby declared especially accountable for the immediate communication to the officers of the nearest police-station of any intended sacrifice of the nature described in the foregoing section; and any *zamindar* or other description of persons above noticed, to whom such responsibility is declared to attach, who may be convicted of wilfully neglecting or delaying to furnish the information above required, shall be liable to be fined by the Magistrate or Joint Magistrate in any sum not exceeding two hundred rupees, and in default of payment to be confined for any period of imprisonment not exceeding six months.

Penalty in
case of
neglect.

Police
how to
act on
receiving
intelli-
gence
of
intended
sacrifice.

Second.—Immediately on receiving intelligence that the sacrifice declared illegal by this Regulation is likely to occur, the police *daroga* shall either repair in person to the spot, or depute his *muharrir* or *jamadar* accompanied by one or more *barkandazes* ²* * and it shall be the duty of the police-officers to announce to the persons assembled for the performance of the ceremony that it is illegal, and to endeavour to prevail on them to disperse, explaining to them that, in the event of their persisting in it, they will involve themselves in a crime and become subject to punishment by the Criminal Courts.

Should the parties assembled proceed in defiance of these remonstrances to carry the ceremony into effect, it shall be the duty of the police-officers to use all lawful means in their power to prevent the sacrifice from taking place, and to apprehend the principal persons aiding and abetting in the performance of it; and in the event of the police-officers being unable to apprehend them they shall endeavour to ascertain their names and places of abode, and shall immediately communicate the whole of the particulars to the Magistrate or Joint Magistrate for his orders.

How to act
when
intelligence
of sacrifice
does
not reach
them until
after it
has taken
place.

Third.—Should intelligence of a sacrifice declared illegal by this Regulation not reach the police-officers until after it shall

¹The word "Native" was omitted by para. 3 and the Sixth Schedule of the Adaptation of Laws Order, 1950.

²The words "of the Hindu religion" were omitted, *ibid*.

of 1829.]

(Sections 4, 5.)

have actually taken place, or should the sacrifice have been carried into effect before their arrival at the spot, they will nevertheless institute a full inquiry into the circumstances of the case, in like manner as on all other occasions of unnatural death, and report them for the information and orders of the Magistrate or Joint Magistrate to whom they may be subordinate.

4, 5. [*Trial of persons concerned in the sacrifice; sentence or death by Court of Nizamat Adalat.*—*Rep. by Act XVII of 1862.*

Bengal Regulation V of 1830.

(The Bengal Indigo Contracts Regulation, 1830.)¹

SHORT TITLE GIVEN	...	...	Act I of 1903.
REPEALED IN PART	...	...	{ Act XVI of 1835. Act III of 1857. Act VIII of 1868. Act XII of 1891.

(9th June, 1830.)

*A Regulation * * * relating to the cultivation and delivery of indigo-plant.*

1. * * * * * Preamble.

whereas it is desirable in certain cases to afford persons who may be unwilling to renew their contracts for the cultivation of indigo the means of obtaining, by summary process, a release from their engagements ;

the following rules have been enacted, to be in force from the date of their promulgation throughout the territories subject to the Presidency of Fort William.

2. [*Criminal prosecution of persons including raiyats to break contract.*].—Rep. by the Repealing Act, 1868 (VIII of 1868).

3. [*Cultivators failing to fulfil engagements liable to imprisonment.*].—Rep. by Act XVI of 1835.

4. [*Punishment of persons damaging indigo-plant.*].—Rep. by Act III of 1857.

5. First.—Any person who, having received advance under a written agreement for the cultivation of indigo, shall be desirous, on the expiration of the period of his contract, to settle his account, shall be at liberty, in the event of the proprietor of the factory, or the person acting in his behalf, refusing to settle the the same, to present a petition to the Zila Court.

Procedure by persons wishing to be released from their engagements.

and the Judge, after a summary inquiry, in the presence of the parties or their authorized agents, into the merits of the case, shall, on proof of the expirations, of the contract, and of there being no balance due from the petitioner, or if the

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Regulation was enacted for the whole of the former Province of Bengal—see the concluding paragraph of sec. 1.

Sections 1 and 5 of the Regulation have been declared, by the Laws Local Extent Act, 1874 (XV of 1874), sec. 6, to be in force throughout the former Province of Bengal except as regards the Scheduled Districts.

The same sections have been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), sec. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

² Words in the title and preamble which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

[Ben. Reg. V of 1830.]

(Section 5.)

petitioner shall deposit in Court the amount of any balance that may be adjudged to be due from him, grant the said petitioner a release from his engagement, and shall pay over the amount of any balance that may be deposited by him to the proprietor, or to the person acting in his behalf.

Procedure
if
proprietor
objects to
receive
balance.

Second.—If the proprietor or person aforesaid shall refuse to receive the balance awarded to him by the summary process above provided, the Judge shall return the amount to the petitioner, leaving the defendant to seek his remedy by a regular suit.

Bengal Regulation IX of 1833.

[The Bengal Land-revenue (Settlement and Deputy Collectors) Regulation, 1833.]¹

SHORT TITLE GIVEN	...	...	Act I of 1903.
REPEALED IN PART	...	...	{ Act X of 1859. Act X of 1873. Act XVI of 1874. Act X of 1914.
REPEALED IN PART AND AMENDED	...	...	Act I of 1903.
ADAPTED	...	...	{ (a) The Government of India (Adaptation of Indian Laws) Order, 1937. (b) The Adaptation of Laws Order, 1950.

(9th September, 1833.)

*A Regulation to modify certain portions of Regulation VII of 1822² * * * to provide for the more speedy and satisfactory decision of judicial questions cognizable by officers of revenue employed in settlements under the above⁴[Regulation]; for enforcing the production of the village accounts; for the⁵[appointment of Deputy Collectors] in the Revenue Department; and to declare the intent of section 5, Regulation VII of 1822², touching claims to malikana.*

1. Experience having demonstrated the expediency of modifying certain enactments of Regulation VII of 1822² * * *, also of providing a more speedy and satisfactory mode of deciding such judicial questions as may be cognizable by officers of the Revenue Department under⁶[that Regulation] and of declaring the intent of the rules regarding *malikana* promulgated by section 5, Regulation VII of 1822²; it having been found expedient likewise that measures should be adopted for enforcing the production of the village-accounts, and for rendering them accessible to all persons concerned having occasion to examine them; also that⁷[persons] of respectability should be employed in more important trusts connected with the revenue-administration; the following provisions have been enacted, to be in force from the date of their promulgation. Preamble.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—The application of the Regulation is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900) sec. 4(2).

²The Bengal Land-revenue Settlement Regulation, 1822.

³The words and figures "and Regulation 4 of 1828" in the title and sec. 1 which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

⁴This word was substituted for the word "Regulations" *ibid.*

⁵Substituted for the words "more extensive employment of native agency" by para. 3 and the Sixth Schedule of the Adaptation of Laws Order, 1950.

⁶These words were substituted for the words "those Regulations" by the Amending Act, 1903 (I of 1903).

⁷Substituted for the word "natives" by para. 3 and the Sixth Schedule of the Adaptation of Laws Order, 1950.

(Sections 2—8.)

2. [Repeal of provisions of Regulation VII of 1822, as to mode of determining jama to be demanded from mahal.]—Rep. by the Amending Act, 1903 (I of 1903).

3. [Repeal of provisions of Regulation VII of 1822 as to investigation of claims simultaneously with determination of Government.]—Rep. by the Amending Act, 1903 (I of 1903).

4. [Repeal of parts of the Bengal Land-revenue Settlement Regulation, 1828 (IV of 1828).]—Rep. by the Repealing Act, 1874 (XVI of 1874).

The ¹[State Government] will hereafter determine the order in which the above matters shall be respectively disposed of.

5. In addition to section 33, Regulation VII of 1822², it is hereby enacted that whenever any judicial question may be depending before a Collector or other officer employed in making settlements under the provisions of Regulation VII of 1822², in which the interests of justice may, in the opinion of such officer, require that the case be decided by arbitration, it shall be lawful for him to fix, under the instructions with which he may be furnished by the superior Revenue-authorities, a period within which the parties must produce the award.

6. In that case, if the parties shall refuse or neglect to produce such award within the term limited, it shall be lawful for the Collector or other officer to summon a *panchayat*, to be composed of three or five impartial and otherwise competent persons of good repute for the trial of the matter at issue.

7. After duly considering the statements and evidence offered by the parties, or, in case of the default or recusance of either, the statements and evidence produced by the party in attendance, the *panchayat* shall declare their opinions, and judgment shall be recorded according to the sentence of the majority.

The superior Revenue-authorities will from time to time issue such rules of practice for the guidance of the officers employed on this duty, or the *panchayats*, as they may consider necessary.

8. No appeal shall be allowed from such decisions, which shall be immediately executed and maintained, unless the Commissioner, subject to the control of the ³* * * Board of Revenue should think proper, for any special reason, to direct that the case shall be submitted to another *panchayat* for decision.

¹The words "Provincial Government" were substituted for the words "Governor General in Council" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was subsequently substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

²The Bengal Land-revenue Settlement Regulation, 1822.

³The word "Sadar" which was repealed by the Amending Act, 1903 (I of 1903), is omitted.

When Collector making settlements considers arbitration necessary, he may fix period for production of a ward.
When Collector may summon *panchayat*.

Procedure of *panchayat*.

Bar of appeal:—submission to second *panchayat*.

of 1833.]

(Sections 9—17.)

9. Any suit brought before any Court of Justice to set aside a decision made in conformity with the above rules shall be non-suited with costs.

Non-suit of suit to set aside decision.

10. In like manner any suit brought before any Court of Justice against the arbitrators, collectively, or individually, appointed in conformity with the rules prescribed, to recover from them the value of the property lost by the decision founded on their award, shall be non-suited with costs.

Also suits against arbitrators.

11. It is hereby declared that the rules concerning *malikana* contained in section 5, Regulation VII of 1822¹, were intended to have a prospective effect only, and to be applicable solely to settlements made under that Regulation, and to recusance tendered at the completion of such settlements.

Intention of rules as to *malikana* in section 5, Regulation VII, 1822.

12. It is further enacted that the village-accounts which are required to be kept in such manner and form as has heretofore been the custom, or in such other mode as may hereafter be prescribed by the ²[Board] of Revenue shall be prepared in duplicate sets—one for deposit in the office of *patwari*, and one for deposit in the office of Collector of the district in which the respective estates or tenures may be situated, and, wherever the office of a *kanungo* may be established, a third copy shall be prepared and deposited in that office.

Village-accounts.

13. The several accounts required for deposit in the *pargana* and *Zila* Revenue-offices, as above stated, instead of being delivered at the expiration of every six months, as prescribed by the rules at present in force, shall be furnished in such mode and at such periods as the ³[Board] may direct.

Accounts to be furnished according to directions of Board.

They shall be open to the inspection of every person concerned desirous of examining them.

14, 15. [Penalties to landholders for not conforming to rules regarding village accounts.]-*Rep. by the Bengal Rent Act, 1859 (X of 1859).*

16. It shall be competent to the ⁴[State Government] to appoint to any revenue-jurisdiction a Deputy Collector, with the powers hereinafter specified.

Appointment of Deputy Collector.

17. [Persons eligible to office, and how appointed.]-*Rep. by the Repealing and Amending Act, 1914 (X of 1914).*

¹The Bengal Land-revenue Settlement Regulation, 1822.

²This word was substituted for the word "Boards" by the Amending Act, 1903 (I of 1903).

³The words "Provincial Government" were substituted for the words "Local Government" by paragraph 4(I) of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was subsequently substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

[Ben. Reg. IX of 1833.]

(Sections 18—25.)

18. [Monthly allowance how fixed, and susceptible of increase.]—*Rep. by the Repealing and Amending Act, 1914 (X of 1914).*

19. [Solemn declaration to be made by Deputy Collectors.]—*Rep. by the Indian Oaths Act, 1873 (X of 1873).*

Subordina-
tion of
Deputy
Collectors.

20. The Deputy Collectors appointed under this Regulation are to be in all respects subordinate to the Collector under whom they may be placed, and are required to perform all duties assigned to them by that functionary.

Duties in
which
Collectors

employ
them.

21. It will be at the discretion of the latter officer to employ them in settlement-duties under the provisions of Regulation VII, 1822¹, in the superintendence of the Government *khas mahals*, and generally in the transaction of any other part of the duties of a Collector.

Their
proceedings
how
recorded
and how
appeal-
able.

22. All proceedings held by a Deputy Collector appointed under this Regulation shall be recorded in his own name and on his own responsibility, subject to the revision and control of the Collector and appealable to the superior authorities in the usual course.

Collector
may
resume
duties
committed
to Deputy.

23. Provided always that the Collector is competent to resume the duties which he may have committed to the Deputy, assigning his reasons for so doing for the information of the Commissioner.

Inter-
ference by
Commis-
sioners
with
arrange-
ments of
Collectors
for employ-
ment of
Deputies.

24. Provided also that the Revenue Commissioners, whenever they think proper, may interfere with any arrangements made by the Collectors for the employment of the Deputies, or the distribution of business to be assigned to those functionaries, subject to the general control vested in the * * * Board of Revenue or the * [State Government], as the case may be.

25. [Rules regarding dismissal of Deputy Collectors.]—*Rep. by the Repealing and Amending Act, 1914 (X of 1914).*

¹The Bengal Land-revenue Settlement Regulation, 1822.

²The word "*Sadar*" which was repealed by the Amending Act, 1903 (I of 1903), is omitted.

³The words "*Provincial Government*" were substituted for the word "*Government*" by para. 3 and Sch. XIV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "*State*" was subsequently substituted for the word "*Provincial*" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

Part II.—Local Acts of the Governor-General of India in Council, Local Acts of the Indian Legislature and Central Acts as modified in their application to West Bengal.

¹Act IX of 1847

(The Bengal Alluvion and Diluvion Act, 1847.)²

SUPPLEMENTED	{ Ben. Act IV of 1868. Ben. Act V of 1920.
SHORT TITLE GIVEN	Act I of 1903.
REPEALED IN PART	{ Ben. Act IV of 1868. Act XIV of 1870. Act XVI of 1874. Act XI of 1891. Act I of 1903.
AMENDED ...	{ Ben. Act IX of 1936. Ben. Act XVII of 1940.
ADAPTED	{ (a) The Government of India (Adaptation of Indian Laws) Order, 1937. (b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948. (c) The Adaptation of Laws Order, 1950.

(8th May, 1847.)

An Act regarding the assessment of lands gained from the sea or from rivers by alluvion or dereliction within the Provinces of ³[West Bengal], [Bihar and Orissa].

1. It is hereby enacted that such parts of the Regulations of the ³[West Bengal] Code as establish tribunals and prescribe rules of procedure for investigations regarding the liability to assessment of lands gained from the sea or from rivers by alluvion or dereliction, or regarding the right of Government to the ownership thereof, shall, from the date of the passing of this Act, cease to have effect within the ⁴[States] of ⁵[West Bengal], [Bihar and Orissa]; ⁵* * * * *; and that no measures shall hereafter be taken for the assessment of such lands, or for the assertion of the right of Government to the ownership thereof except under the provisions of this Act.

Repeal of enactments.

¹This Act shall stand repealed with the coming into force of clause (2) of section 59 of the West Bengal Land Reforms Act, 1955 (West Ben. Act X of 1956).

²SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Act was passed for the whole of the former Province of Bengal—see the title.

It has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), sec. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874) sec. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

The application of the Act is barred in the Chittagong Hill-tracts by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), sec. 4(2).

³Substituted for the word "Bengal" by para. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

⁴Substituted by paragraph 4(1) of the Adaptation of Laws Order, 1950, for the word "Provinces".

⁵The words "and that all such investigations pending before the Collectors and Deputy Collectors in the said Provinces at the said date shall forthwith be discontinued" which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

[Act. IX]

(Sections 2—5.)

"State of Orissa" defined.

Power to direct new surveys of riparian lands.

Date of approval of surveys.

Deduction from jama of estates from which lands have been washed away.

2. ¹[The expression "State" of Orissa", in this Act, shall be taken to mean only so much of the ²[State] of Orissa as was on the 8th May, 1847³, subject to the Government of Bengal.]

3. ⁴Within the said ⁴[States] it shall be lawful for the ⁵[State Government], in all districts or parts of districts of which a revenue-survey may have been or may hereafter be completed and approved by Government, to direct from time to time, whenever ten years from the approval of any such survey shall have expired, a new survey of lands on the banks of rivers and on the shores of the sea, in order to ascertain the changes that may have taken place since the date of the last previous survey, and to cause new maps to be made according to such new survey.

4. 6* * * * * The approval of the revenue-survey of districts or parts of districts with may be hereafter surveyed shall be deemed to have taken place on such day as may be specified as the day of such approval in the ⁷[Official Gazette].

5. ⁸Whenever on inspection of any such new map it shall appear to the local Revenue-authorities that land has been washed away from or lost to any estate paying revenue directly to Government, they shall without loss of time make a deduction from the *sadar jama* of the said estate equal to so much of the whole *sadar jama* of the estate as bears to the whole the same proportion as the *mufassal jama* of the land lost bears to the *mufassal jama* of the whole estate; but, if the *mufassal jama* of the whole estate or of the land lost cannot be ascertained to the satisfaction of the local Revenue-authorities, then the said local Revenue-authorities shall make a deduction from the *sadar jama* of the estate equal to so much of the whole *sadar jama* of the estate as bears to the whole the same proportion as the land lost bears to the whole estate. And this deduction, with the reasons thereof, shall be forthwith reported by the local Revenue-authorities for the information and orders of the ⁹* * Board of Revenue whose orders thereupon shall be final.

¹Formal words in secs. 2 and 3, which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

²The word "State" was substituted for the word "Province" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

³The words and figures "as was on the 8th May, 1847" were substituted for the words "as is" by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴Substituted by paragraph 4(I) of the Adaptation of Laws Order, 1950, for the word "Provinces."

⁵The words "Provincial Government" were substituted for the words "Government of Bengal" by para. 3 and the 1st Schedule of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

⁶Matter repealed by the Repealing Act, 1874 (XVI of 1874), is omitted.

⁷These words were substituted for the words "*Calcutta Gazette*" by paragraph 4(I) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁸Formal words in secs. 5 and 6, which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

⁹The word "*Sadar*," which was repealed by the Amending Act, 1903 (I of 1903), is omitted.

of 1847.]

(Sections 5A—9.)

¹5A. Whenever any land which has been washed away from or lost to any estate paying revenue directly to Government reappears above the water and reforms at the original site of such land, the proprietor of the estate from the *sadar jama* of which a deduction has been made under section 5 on account of the land so washed away or lost, shall have the right to resume immediate possession of the land so reformed, subject to the payment of revenue in respect thereof with effect from the date on which such revenue is assessed. Such revenue shall bear to the *sadar jama* the same proportion as the area of the land so reformed bears to the area of the remainder of the estate. This assessment, with the reasons thereof, shall be forthwith reported by the local Revenue-authorities for the information and orders of the Board of Revenue, whose orders thereupon shall be final.

Assessment of land reformed on original site.

6. ²Whenever on inspection of any such new map it shall appear to the local Revenue-authorities that land ³[other than land to which the provisions of section 5A apply,] has been added to any estate paying revenue directly to Government ⁴[or to any land not subject to the payment of revenue], they shall without delay assess the same with a revenue payable to Government according to the rules in force for assessing alluvial increments, and shall report their proceedings forthwith to the ⁵* * Board of Revenue, whose orders thereupon shall be final.

Assessment of increments to revenue-paying estates.

7. [Local Revenue-authorities to take possession of a new island, and to assess and settle the land.].—Rep. by the Bengal Alluvion Act, 1868 (Ben. Act IV of 1868).

8. [Exception of certain suits from operation of Act.].—Rep. by the Repealing Act, 1870 (XIV of 1870).

9. ⁶* * no suit or action in any Court of Justice shall lie against the ⁷[Government] or any of its officers on account of anything done in good faith in the exercise of the powers conferred by this Act.

Indemnity clause.

¹Inserted by sec. 2 of the Bengal Alluvion and Diluvion (Amendment) Act, 1940 (Ben. Act XVII of 1940).

²Formal words in secs. 5 and 6 which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

³Inserted by sec. 3 of the Bengal Alluvion and Diluvion (Amendment) Act, 1940 (Ben. Act XVII of 1940).

⁴These words were inserted by sec. 2 of the Bengal Alluvion and Diluvion (Amendment) Act, 1936 (Ben. Act IX of 1936).

⁵The word "*Sadar*" which was repealed by the Amending Act, 1903 (I of 1903), is omitted.

⁶Formal words in sec. 9 which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

The words "except as regards the proprietary right to islands," which were repealed by the Amending Act, 1903 (I of 1903), are also omitted.

⁷The word "Crown" was substituted for the word "Government" by the First Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "Government" was subsequently substituted for the word "Crown" by paragraph 4(7) of the Adaptation of Laws Order, 1950.

Act XX of 1848

(The Bengal Landholders' Attendance Act, 1848)¹

SHORT TITLE GIVEN	...	...	Act I of 1903.
			(a) The Government of India (Adaptation of Indian Laws) Order, 1937.
ADAPTED			(b) The Adaptation of Laws Order, 1950.

(23rd September, 1848.).

An Act for better enforcing the attendance of proprietors and farmers of land before Collectors of land-revenue in the Lower Provinces of the Bengal Presidency.

Whereas, by sundry Regulations of the Bengal Code, provision is made for the imposition of a daily fine by the Board of Revenue or other authority exercising the powers of that Board on any proprietor or farmer of land, subject to the provisions contained in the said several Regulations, who, when duly summoned by the Collector or other officer exercising the powers of Collector, shall omit or refuse to attend, or to cause his officer or agent to attend, or to furnish the accounts or document required, and shall not show sufficient cause for such omission; and it is further provided that the fine, when confirmed by Government, is to be levied by the same process as is prescribed for the recovery of arrears of revenue;

Preamble.

And whereas in many cases, by the delay thus occasioned, the whole burden of the penalty is greatly increased beyond what would be necessary if summary power were given to the officer by whom the requisition is made to impose and levy reasonable fines, subject to review by the Commissioner of Revenue and other superior authority;

It is enacted as follows :—

1. If any proprietor or farmer of land shall omit or refuse to attend, or to cause his officer or agent to attend, when duly summoned by the Collector, in any case specified in any of the said Regulations, by the time prescribed in the notice issued by the Collector, or shall omit or refuse to furnish the accounts or documents required, and shall not show sufficient cause for such omission, the Collector may impose of his own authority such daily fine, to be payable daily until compliance with the requi-

Penalty on landholders not attending when summoned by Collector.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Act was passed for the whole of the former Province of Bengal—see the title.

It has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), sec. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), sec. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

[Act XX of 1848.]

(Sections 2—7.)

Levy of
fine.

sition, as he may think adequate to the situation and circumstances in life of the defaulter, not exceeding in any case the daily fine of fifty rupees : and the amount of such fine, accruing due from time to time, may be levied without further confirmation by the same process as is prescribed for the recovery of arrears of revenue.

Report of
imposition
and levy
of fine.

2. The Collector shall forthwith report the imposition of every such fine, and the amount thereof, and also from time to time the amount levied, to the Commissioner of Revenue, who shall report the same for the information of the ¹[State Government].

Appeal
from .
Collector's
orders.

3. Every order passed by a Collector under this Act shall be appealable in the usual manner to the Commissioner of Revenue and other superior authority ; but no such appeal shall avail to prevent the levy of any fine so imposed pending the appeal.

Special
report of
levy ex-
ceeding five
hundred
rupees.

4. Whenever the amount levied under any such order issued for any default by authority of a Collector under this Act shall have exceeded five hundred rupees, the Collector shall report the case specially to the Commissioner of Revenue ; and no further levy for such default shall be made otherwise than by authority of the Commissioner of Revenue.

Saving of
power to
fine.

5. Nothing in this Act contained shall be deemed to repeal the power of imposing daily fines and of levying the fines so imposed in the manner prescribed by the said several Regulations.

" Collec-
tor " defined.

6. The word "Collector" used in this Act shall be taken to mean any person lawfully exercising the powers of a Collector.

Extent of
Act.

7. *This Act shall not extend to the North-West Provinces of the Presidency of Bengal.*

¹The words "Provincial Government" were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was subsequently substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

Act XXIII of 1850

(The Calcutta Land-revenue Act, 1850.)¹

SHORT TITLE GIVEN	...	Act I of 1903.
REPEALED IN PART AND AMENDED		Act XV of 1882.
ADAPTED	...	<div style="display: flex; align-items: center;"> <div style="font-size: 3em; margin-right: 10px;">{</div> <div> <p>(a) The Government of India (Adaptation of Indian Laws) Order, 1937.</p> <p>(b) The Adaptation of Laws Order, 1950.</p> </div> </div>

(8th June, 1850.)

An Act for securing the Land-revenue of Calcutta.

Whereas it is expedient that the land-revenue accruing due to the ²[Crown] within Calcutta be ascertained and collected in as summary a manner as in other parts of the territories under the government of the ³[Crown]:

Preamble.

It is declared and enacted as follows :

1. All assessable lands, not the property of the ³[Government], within the town of Calcutta, of which the rate of assessment is not known, or which have not heretofore been assessed, shall be assessed at the rate of three annas for each *cottah*.

Assess-
ment of
unassessed
lands.

2. *Lakhiraj* tenures of land in Calcutta, of which uninterrupted possession has been held exempt from assessment for sixty years, shall be valid : no other *lakhiraj* tenures of land in Calcutta shall be deemed valid unless the same are or shall be held under an unexpired grant from the British Government.

Lakhiraj
tenures.

3. If any owner of land within Calcutta, or any person holding land within Calcutta on lease from the ³[Government] shall, upon the written demand of the Collector, refuse or neglect to pay any sum at which the land is assessed, or for which he is liable under his lease, the Collector may levy the same by distress and sale of the goods and chattels, wherever found, of such owner or lessee, or, after written demand upon the tenant or occupier, and his refusal or neglect to pay the sum lawfully demanded, by distress and sale of any goods and chattels found upon the land, in the manner appointed for regulating distress for small rents in Calcutta by ⁴[the Presidency Small Cause Courts Act, 1882, Chapter VIII] ; and, for the purpose

Levy, by
distress
and sale,
of unpaid
assess-
ments.

of 1882.

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Act extends only to Calcutta—see the title and preamble.

²This word was substituted for the words "East India Company" by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

³The word "Crown" was substituted for the words "East India Company" by the First Schedule of the Government of India (Adaptation of Indian Laws) Order, 1937 and the word "Government" was subsequently substituted for the word "Crown" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

⁴These words and figures were substituted for the words and figures "Act VII, 1847," by sec. 3 of the Presidency Small Cause Courts Act, 1882 (XV of 1882).

(Sections 4—9.)

Powers of
Collector
for distress
and sale.

of any such distress and sale, the Collector shall have all the powers of ¹[the Judges of the Court of Small Causes at Calcutta]; and the Collector shall have power to appoint any of his officers to perform the duties of bailiffs and appraisers, and of the chief clerk of the said Court, ²* * and all the provisions of the said Act relating to ¹[the Judges of the Court of small Causes at Calcutta] and their Court shall be deemed to apply to the said Collector and his office in the execution of this Act.

Deduction
by occupier
from
landlord's
rent.

4. In the case of payment by any tenant or occupier not holding immediately under the ³[Government], or the seizure and sale of his property, he may deduct the amount of the payment or levy from the next payment of rent to his landlord.

Priority of
Govern-
ment
claim.

5. The claim of the ³[Government] for land-revenue or rent has priority over all other claims upon the land, or to which property distrained upon the land may be liable.

Distress not
stayed
unless
amount
lodged.

6. If the Collector's claim for arrears of rent is disputed, the process of distraint and sale shall not be stayed, unless the amount claimed be lodged with the Collector.

Recovery
of arrears.

7. Arrears of rent or revenue which shall become due to the ³[Government], within the town of Calcutta after the passing of this Act shall be recoverable at any time within six years next after the same are due, or next after an acknowledgment of the same in writing has been given by the person by whom the same is payable or his agent, and not afterwards.

Inquiry
into claims
to hold
land
lakhiraj.

8. When a claim to hold land *lakhiraj* or free of assessment shall be set up under this Act, the Collector shall inquire into the claim, taking such evidence as the claimant may offer or the public records supply, and shall report his proceedings and decision in the case for the consideration of the Revenue Commissioner. If the Commissioner is satisfied of the validity of the claim, he shall make an order accordingly, and such order shall be final. If he is not satisfied of the validity of the claim, he shall direct the Collector to assess the land, leaving the claimant to contest the Collector's demand in the Civil Courts as herein provided.

Penalty for
obstruct-
ing
Collector.

9. Any person obstructing or molesting the Collector or any of his subordinate officers in the execution of their duty

¹The words "the Judges of the Court of Small Causes at Calcutta" were substituted for the words "a Commissioner of the Court for recovery of small debts referred to in the said Act" and "the said Commissioners," respectively, by sec. 3 of the Presidency Small Cause Courts Act, 1882 (XV of 1882).

²The words "as provided by the said Act," were repealed, *ibid*.

³See foot-note 3 on page 313, *ante*.

of 1850.]

(Sections 10—14.)

shall, on conviction before a Magistrate of the town of Calcutta, be liable to a fine not exceeding five hundred rupees, and, in default of payment, to imprisonment in the common jail for a term not exceeding six months, or until the fine is sooner paid.

10. The Collector may punish any contempt committed in his presence in open *cutcherry* or office, by fine not exceeding two hundred rupees, and, in default of payment, by imprisonment in the common jail for a term not exceeding one month : from every such order, or fine or imprisonment, an appeal shall lie to the Commissioner, whose decision shall be final.

Power to
punish
contempts.

11. The Collector shall act in the execution of this Act under the usual control of the superior Revenue-authorities.

Control of
Collector.

12. The ground-rents payable to the ¹[Government] from lands in Calcutta are revenue within the meaning of the Act of Parliament 21 Geo. 3, c. 70², and the Supreme Court of Judicature established by Royal Charter at Fort William in Bengal has not any civil jurisdiction concerning, the said ground-rents or concerning anything ordered or done in the assessment or collection thereof.

Bar of
Jurisdic-
tion of
Supreme
Court.

13. All actions concerning any trespass or injury committed by any Revenue-officer acting under colour of this Act, or concerning any claim in respect of any goods taken by, or any moneys paid to, any Revenue-officer under this Act, or concerning any claim of rent or revenue on the part of the ¹[Government] under this Act, shall be tried and determined in the Civil Courts established by the ¹[Government], at the *sadar* station of the 24-Parganas, notwithstanding that the cause of action in respect of which such action is brought arose, or the defendant therein resides, within the limits of the town of Calcutta : and every such action shall be brought within six months after the cause of action arose, and not afterwards.

Jurisdic-
tion of
Courts of
24-
Parganas.

14. The words "Collector" and "Commissioner" used in this Act shall be taken to mean any person lawfully appointed to exercise the powers of Collector and Commissioner respectively.

Limita-
tion.

" Collec-
tor",
"Com-
missioner."

¹See foot-note 3 on page 313, *ante*.

²The East India Company Act, 1780.

Act VI of 1853

(The Rent Recovery Act, 1853.)¹

SHORT TITLE GIVEN	...	...	Act V of 1897.
			Ben. Act VIII of 1865.
REPEALED IN PART	...	...	Act XII of 1873.
			Act XII of 1891.
ADAPTED	...	...	(a) The Government of India (Adaptation of Indian Laws) Order, 1937.
			(b) The Adaptation of Laws Order, 1950.

(15th April, 1853.)

An act relating to summary suits for arrears of rent, to sales of patni taluks and other saleable tenures, and to sales of land in satisfaction of summary decrees for rent.

[Whereas by Regulation VIII, 1831², of the Bengal Code, the hearing and decision of summary suits or claims relating to arrears or exactions of rents were transferred from the Judges of the Zila or City Courts to the Collectors of land revenue of the several districts;

And whereas by Regulation VII, 1832³, of the Bengal Code, the conduct of sales of patni taluks and other saleable tenures under Regulations VIII, 1819⁴, and I, 1820⁵, of the same Code, and the performance of other acts preparatory to, or connected with, such sales, were transferred to the Collector or Deputy Collector, of Land-revenue or Head Assistant to the Collector or Deputy Collector subject to an appeal as therein provided ;

Preamble.

And whereas by Act VIII, 1835⁶, the power therefore vested in the Judge of the Diwani Adalat of selling land in satisfaction of summary decrees for rent was transferred to the Collectors of Land-revenue, and it was enacted that all sales for the recovery of arrears of rent held under clause 7, section 15, Regulation VII, 1799⁶, should be conducted by the Collector, his Deputy or duly authorized Assistant, and that ten days' notice should be given of such sales by advertisement to be stuck up at the cutcherry of the Zila Court or local Adalat and that of the Collector⁷ * * * ;]

¹SHORT TITLE.—This short title was given by the Amending Act, 1897 (V of 1897).

²Ben. Reg. VIII of 1831 was repealed by the Bengal Rent Act, 1859 (X of 1859).

³Ben. Reg. VII of 1832 was repealed by the Bengal Civil Courts Act, 1871 (VI of 1871).

⁴The Bengal Patni Taluks Regulation, 1819.

⁵The Bengal Patni Taluks Regulation, 1820.

⁶Act VIII of 1835 and Ben. Reg VII of 1799 were repealed by the Repealing Act, 1874 (XVI of 1874).

⁷Portion of the preamble relating to Act XXV of 1850 and Regulation VIII of 1819, sec. 9, which was repealed by the Amending Act, 1891 (XII of 1891), is omitted.

(Sections 1—4.)

And whereas doubts may be entertained as to who ought to exercise the jurisdiction transferred by the abovementioned Regulations and Acts, where lands situate within the *zila* or other district of one Collector form part of an entire estate paying revenue to the Collector of another *zila* or district ;

in order therefore to avoid such doubts, and also to define who are the proper officers to exercise such jurisdictions in cases where lands are situate in a district assigned to an independent Deputy Collector, and also in cases where lands held in *patni* or other tenure at one entire rent are situate in two or more Collectorates ¹ * * * *

It is enacted as follows :—

Conduct of
sale of
lands when
all in one
collecto-
rate.

1. If the lands which may be the subject of any such sale, or to the rent of which any such suit may relate, be all situate in one collectorate, the Collector of such collectorate is the Collector to conduct the sale or to hear and decide the suit.

When in
two or
more
collecto-
rates.

If one *taluk* or tenure shall comprise lands situate in two or more collectorates, or if any lands situate in two or more collectorates be held under one lease or engagement or at one entire rent, the Collector in whose collectorate the greater part of such lands shall be situate is the Collector to conduct the sale of such *taluk* or tenure or of such lands, and to hear and decide any summary suit relating to arrears or exactions of rent in respect thereof.

Procedure
in case of
doubt as to
officer
having
jurisdic-
tion.

2. If a Collector to whom application shall be made to exercise any of the powers abovementioned shall entertain any doubt as to whether the lands or the greater part of them are situate within his collectorate, he shall report the case for the order of the Board to which he is subordinate, and, if ordered by such Board to proceed in the matter, such order shall be conclusive upon the question of his jurisdiction.

“Collec-
torate”
defined.

3. The word “Collectorate” in this Act means the *zila* or other district to which a Collector is appointed, and no lands situate beyond the limits of such *zila* or district shall be deemed to be situate within the collectorate by reason of their forming part of an estate paying revenue to the Collector thereof.

Powers
and juris-
diction
of indep-
endent
Deputy
Collector.

4. An independent Deputy Collector may, within his Deputy Collectorate, exercise all the powers and jurisdictions of a Collector with which he may be entrusted, in the same manner and to the same extent as a Collector may do within his Collectorate ; and, with reference to the exercise of such powers and jurisdictions, his Deputy Collectorate shall be deemed a Collectorate, and he shall be deemed to be a Collector within the meaning of this Act.

¹The words “and to prevent any such decision or sale already made from being held invalid upon the ground of its having been made by an officer of a wrong district,” which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

of 1853.]

(Sections 5—10.)

5. An independent Deputy Collector is an officer appointed by ¹[the State Government] to act as Deputy Collector independently of a Collector, whether his office is one for the receipt of revenue or not.

"Independent Deputy Collector."

A Deputy Collectorate is the district within which an independent Deputy Collector is directed by ¹[the State Government] to act.

"Deputy Collectorate."

6. In cases of sales by an independent Deputy Collector under the abovementioned Regulations or Act, any notice thereby required to be stuck up at the *cutcherry* of the Collector may be stuck up at the *cutcherry* of the Deputy Collector.

Publication of notice of sale by independent Deputy Collector.

7. An independent Deputy Collector may exercise the powers assigned to him over any part of his Deputy Collectorate in public *cutcherry*, in whatever part of his Deputy Collectorate the same may be situate or held.

Exercise of powers of independent Deputy Collector.

8. Any notice required by the abovementioned Regulations or Act to be given by advertisement to be stuck up at the *cutcherry* of the Zila Court or local *Adalat* shall be stuck up at the Zila Court or local *Adalat* within the jurisdiction of which the lands to be sold, or the greater portion of them, as the case may be, shall be situate.

Publication of notice required by law to be advertised.

9. [Order, etc., not to be disputed on ground that Collector was not the Collector of proper district.]—Rep. by the Repealing Act, 1873 (XII of 1873).

10. [Extension of certain enactments to all sales under Act VIII of 1835.]—Rep. by the Bengal Rent Recovery (under-tenures) Act, 1865 (Ben. Act VIII of 1865).

¹The words "the Provincial Government" were substituted for the word "Government" by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was subsequently substituted for the word "Provincial" by paragraph 4 (1) of the Adaptation of Laws Order, 1950.

Act XVIII of 1856

(The Calcutta Land-revenue Act, 1856)¹

SHORT TITLE GIVEN	...	...	Act I of 1903.
REPEALED IN PART	...	...	{ Act XVIII of 1869. Act XII of 1891.

(23rd August, 1856.)

*An Act relating to the administration of the public revenues in the
Town of Calcutta.*

Whereas it is expedient that the Collector of Calcutta ²* * *
* should have power to employ any Deputy Collector subordinate to him, in the performance of any part of the duties of his office ; it is enacted as follows :—

Preamble.

1. (*Regulations modified.*)—Rep. by the Amending Act, 1891 (XII of 1891.)

2. [*Collector to have charge of collection of stamp duty in Calcutta.*—Rep. by the General Stamp Act, 1869 (XVIII of 1869.)

3. It shall be lawful for the Collector of Calcutta to employ any Deputy Collector subordinate to him in the performance of any part of the duties of his office under ³* * * Act XXIII of 1850⁴ ; and all Rules, Regulations and Acts relating to the office of Deputy Collector shall be of the same force within the town of Calcutta as in other parts of the territories subject to the Presidency of Fort William in Bengal.

Collector may entrust any part of his duties to his Deputy.

¹SHORT TITLE.— This short title was given by the Amending Act, 1903 (I of 1903).

²The words "should have charge of the collection of the stamp-duty within the town of Calcutta, and that he" which were repealed by the Amending Act, 1851 (XII of 1891), are omitted.

³The words and figures "the said Regulation, or under Act II of 1849, or" were repealed, *ibid*.

⁴The Calcutta Land-revenue Act, 1850.

Act XXI of 1857
(The Howrah Offences Act, 1857.)

CONTENTS.

Preamble.

Section.

1. Cases under this Act by whom to be tried.
2. Possession of stolen property by one who falls to account satisfactorily for the possession.
Power to summon persons declared to have had possession of stolen property within the jurisdiction of the Magistrate.
Penalty if such possession fraudulent.
3. Apprehension and punishment of reputed thieves, etc.
- 4 to 6. (*Repealed.*)
7. Brothels.
- 8, 9. (*Repealed.*)
- 10 to 15 & 15A. (*Repealed.*)
- 16, 17. (*Repealed.*)
18. Manufacture or possession of gunpowder.
19. Licenses by Magistrate for sale and deposit of gunpowder, etc.
20. Penalty for drunkenness, or riotous or indecent behaviour in public.
21. Penalty for committing nuisance in streets.
22. Beggars.
23. Penalty for the following offences in public streets, etc. :—
furious or negligent driving or riding:
letting loose horses, ferocious dogs, etc. :
leaving cart, etc., without control:
Obstruction to passengers by fastening animals:
ill-treating animals:
lighting fires and discharging guns, fire-works, etc.
- 24 to 50. (*Repealed.*)
51. Police-officer may arrest without warrant on view of offence.
52. Police-officer may take into custody, without warrant, persons charged with aggravated assault recently committed.
53. Persons taken into custody by a police-officer, without warrant, may be detained in police-office until brought before Magistrate or bailed.
54. Procedure on information or complaint laid before the Magistrate of an offence against this Act.
55. (*Repealed.*)
56. Jurisdiction.
57. (*Omitted.*)
58. (*Repealed.*)
59. Interpretation.

Schedule.

Act XXI of 1857

(The Howrah Offences Act, 1857.)¹

SHORT TITLE GIVEN	Act I of 1903.
	Act XVI of 1874.
	Act XII of 1891.
REPEALED IN PART	Act I of 1903.
	Ben. Act V of 1876.
	Ben. Act III of 1884.
	West Ben. Act XXXII of 1957.
AMENDED	{ Ben. Act IV of 1913.
	{ Ben Act V of 1922.
ADAPTED ...	(a) The Government of India (Adaptation of Indian Laws) Order, 1937.
	(b) The Adaptation of Laws Order, 1950.

(10th July 1857.)

*An Act to make better provision for the order and good government
2* * * * * of the station of Howrah.*

Whereas Acts have been passed for regulating the police and for the conservancy and improvement of the town of Calcutta and of the other presidency-towns ; and whereas large portions of 3* * * the station of Howrah are not less populous than parts of the said town, and it will conduce to the order and good government of the said 4* * station that some of the provisions of the said Acts, with certain necessary modifications, should be extended to the said 4* * station ; It is enacted as follows :—

Preamble.

1. Whoever is charged with having committed any of the offences mentioned in this Act, within the limits of the said 5* * station, as described in the schedule hereunto annexed, may be tried for any such offence by the Magistrate within whose jurisdiction the offence is alleged to have been committed ;

Cases under this Act by whom to be tried.

and, on conviction, may be sentenced by such Magistrate to the punishment hereinafter prescribed for the offence.

¹SHORT TITLE.— This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.— This Act applies only to Howrah—see the title and preamble.

²The words "of the suburbs of Calcutta and" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

³The words "the suburbs of the said town of Calcutta and of", in the preamble, were repealed, *ibid*.

⁴The words "suburbs and" were repealed, *ibid*.

⁵The word "suburbs or", were repealed, *ibid*.

[Act XXI

(Sections 2, 3.)

Possession of stolen property by one who fails to account satisfactorily for the possession.

Power to summon persons declared to have had possession of stolen property within the jurisdiction of the Magistrate.

Penalty if such possession fraudulent.

Apprehension and punishment of reputed thieves, etc.

2. *Clause 1.*—Whoever has in his possession, or conveys in any manner, anything which may be reasonably suspected of being stolen or fraudulently obtained, shall, if he fail to account satisfactorily how he came by the same, be liable to a penalty not exceeding one hundred rupees, or to imprisonment, with or without hard labour, for any term not exceeding three months.

Clause 2.—If any person, charged with having or conveying anything stolen or fraudulently obtained, shall declare that he received the same from some other person, or that he was employed as a carrier, agent or servant to convey the same for some other person,

the Magistrate may cause every such other person, and also, if necessary, every former or pretended purchaser or other person through whose possession the same shall have passed (provided that such other person shall be alleged to have had possession of the same within the jurisdiction of such Magistrate) to be brought before him and examined, and shall examine witnesses touching the same ;

and if it appear to such Magistrate that any person so brought before him had possession of such thing, and had reasonable cause to believe the same to have been stolen or unlawfully obtained, such person shall be liable to a penalty not exceeding one hundred rupees, or to imprisonment, with or without hard labour, for any term not exceeding three months.

3. Any person found, between sunset and sunrise, armed with any dangerous or offensive instrument whatsoever, with intent to commit any offence against the person or property of another ;

any reputed thief found, between sunset and sunrise, on board any vessel or boat, or lying or loitering in any bazar, street, road, yard, thoroughfare or other place, who shall not give a satisfactory account of himself ;

any person found, between sunset and sunrise, having his face covered or otherwise disguised, with intent to commit any such offence as aforesaid ;

any person found, between sunset and sunrise, in any dwelling-house or other building whatsoever, without being able satisfactorily to account for his presence therein ;

and any person having in his possession, without lawful excuse (the proof of which excuse shall be on such person), any implement of house-breaking,

shall be liable to imprisonment, with or without hard labour, for a term not exceeding three months ;

and any such person may be taken into custody by any police-officer without a warrant.

of 1857.]

(Sections 4—13.)

4 to 6. [*Penalty for carrying arms without authority ; order for maintenance of wives or children ; penalty for harbouring deserters from merchant-vessels.*—Rep. by the Bengal Municipal Act, 1884 (Ben. Act III of 1884).

7. On the complaint of three or more householders that a house in their immediate neighbourhood is used as a common brothel or lodging-house for prostitutes or disorderly persons of any description, to the annoyance of the respectable inhabitants of the vicinity, the Magistrate may summon the owner or tenant of the house to answer the complaint ; Brothels.

and on being satisfied that the house is so used, and is therefore a source of annoyance and offence to the neighbours, may order the owner or tenant to discontinue such use of it ;

and, if he shall fail to comply with such order within five days, may impose upon him a fine to the extent of twenty-five rupees for every day thereafter that the house shall be so used.

8, 9. [*Licenses for retail sale of spirituous or fermented liquors.*—Rep. by the Bengal Municipal Act, 1884 (Ben. Act III of 1884).

10. [*Penalty for owning or keeping, or having charge of a gaming-house, etc.*—Rep. by sec. 18 (c) of the West Bengal Gambling and Prize Competitions Act, 1957 (West Bengal Act XXXII of 1957).

11. [*Penalty for being found playing in a gaming-house.*—Rep. by sec. 18 (c) of the West Bengal Gambling and Prize Competitions Act, 1957 (West Bengal Act XXXII 1957).

12. [*Magistrate may authorize certain police-officers to enter a gaming-house for the purpose of search and seizure.*—Rep. by sec. 18 (c) of the West Bengal Gambling and Prize Competitions Act, 1957 (West Bengal Act XXXII of 1957).

13. [*On conviction for keeping a gaming-house, instruments of gaming to be destroyed, etc.*—Rep. by sec. 18 (c) of the West Bengal Gambling and Prize Competitions Act, 1957 (West Bengal Act XXXII of 1957).

(Sections 14—20.)

14. [*Portion of fine may be paid to informer.*—Rep. by sec. 18 (c) of the West Bengal Gambling and Prize Competitions Act, 1957 (West Bengal Act XXXII of 1957).

15. [*Gambling in the streets.*—Rep. by sec. 18 (c) of the West Bengal Gambling and Prize Competitions Act, 1957 (West Bengal Act XXXII of 1957).

15A. [*Exemption of games of mere skill.*—Rep. by sec. 18 (c) of the West Bengal Gambling and Prize Competitions Act, 1957 (West Bengal Act XXXII of 1957).

16, 17. [*Pawnbrokers, etc., to report stolen property, pawnbrokers, etc., when to be deemed receivers of stolen goods.*—Rep. by the Bengal Municipal Act, 1884 (Ben. Act III of 1884).

Manufacture or possession of gunpowder.

18. Whoever manufactures gunpowder,

or, without a license from the Magistrate, has in his possession in any house, shop, warehouse or other building, at any one time, a greater quantity of gunpowder than ten pounds,

shall be liable to a fine not exceeding two hundred rupees, and also to forfeit such gunpowder so manufactured or possessed, together with the vessel or receptacle in which it may be contained.

Licenses by Magistrate for sale and deposit of gunpowder, etc.

19. The Magistrate may grant to any person a license for the sale or keeping in deposit of any quantity of gunpowder not exceeding fifty pounds on such conditions, and for such term not exceeding one year, as shall be specified in the license;

and any person who shall be guilty of a breach of any of such conditions shall be liable to a fine not exceeding one hundred rupees, and to forfeit all gunpowder so kept in deposit contrary thereto, and the vessels containing it, and also to forfeit his license.

Penalty for drunkenness, or riotous or indecent behaviour in public.

20. Whoever is found drunk and incapable of taking care of himself or is guilty of any riotous or indecent behaviour in any street or thoroughfare or in any place of public amusement or resort,

and whoever is guilty of violent behaviour in any police-office,

shall be liable to a fine not exceeding twenty rupees, or to imprisonment, with or without hard labour, for a term not exceeding fourteen days.

of 1857.]

(Sections 16—32.)

21. Whoever wilfully and indecently exposes his person, or commits a nuisance by easing himself in or by the side of or near to any public street or thoroughfare or place, shall be liable to a fine not exceeding ten rupees, or, in default of payment thereof, to imprisonment, with or without hard labour, for a term not exceeding fourteen days.

Penalty for committing nuisance in streets.

22. Whoever, in any public road, street, thoroughfare or place, begs or applies for alms, or exposes or exhibits any sores, wounds, bodily ailment or deformity with the object of exciting charity or of obtaining alms,

Beggars.

or whoever seeks for or obtains alms by means of any false statement or pretences,

shall be liable to imprisonment, with or without hard labour, for any term not exceeding one month.

23. Whoever, in any public street, road, thoroughfare or place of public resort, commits any of the following offences, shall be liable to a fine not exceeding twenty rupees :—

Penalty for the following offences in public streets, etc.—
furious or negligent driving or riding :
letting loose horses, ferocious dogs, etc :

(i) Whoever drives or rides any animal or drives any vehicle in a manner so rash or negligent as to indicate a want of due regard for the safety of others :

(ii) Whoever negligently lets loose any horse, or suffers to be at large any ferocious dog without a muzzle, or sets on or urges any dog or other animal to attack, worry or put in fear any person, horse or other animal :

(iii) Whoever, being in charge of a cart, carriage or horse, leaves it at such a distance as not to have the same under due control :

leaving cart, etc., without control :
obstruction to passengers by fastening animals :
ill-treating animals :

(iv) Whoever fastens any animal so as to cause obstruction or danger to passengers.

(v) Whoever cruelly beats, abuses or tortures any animal :

(vi) Whoever sets fire to or burns any straw or other matter, or lights any bonfire, or wantonly discharges any firearm or air-gun, or lets off or throws any firework, or sends up any fire-balloon.

lighting fires and discharging guns, fireworks, etc.

24. [Beating drums, tomtoms, etc.]—Rep. by the Bengal Municipal Act, 1884 (Ben. Act III of 1884).

25 to 32. [Penalty for depositing dirt on street, etc. ; allowing sewerage to flow on street ; future obstructions in street ; taking up pavement ; removal of projections from houses ; houses projecting to be set back when taken down ; power to trim hedges bordering on roads.]—Rep. by the Bengal Municipal Act, 1876 (Ben. Act V of 1876).

(Sections 33—53.)

33 to 37. [*Houses in dangerous state ; sale of materials of such houses ; penalty for not removing filth ; filthy houses, etc. ; filthy cattle-stalls, etc.*].—Rep. by the Bengal Municipal Act, 1884 (Ben. Act III of 1884).

38. [*Licensing of public necessities.*].—Rep. by the Bengal Municipal Act, 1876 (Ben. Act V of 1876).

39. [*Neglecting private drains, etc.*].—Rep. by the Bengal Municipal Act, 1884 (Ben. Act III of 1884).

40 to 45. [*Penalty for fouling water ; power to fill up unwholesome tanks ; power to drain off stagnant pools : penalty for not lighting deposits of building materials or excavations ; enclosing of dangerous places ; penalty for establishing slaughter-houses without license.*].—Rep. by the Bengal Municipal Act, 1876 (Ben. Act V of 1876).

46. [*Unclean slaughter-houses.*].—Rep. by the Bengal Municipal Act, 1884 (Ben. Act III of 1884).

47 to 50. [*Offensive trades ; burial and burning grounds ; stray dogs.*].—Rep. by the Bengal Municipal Act, 1876 (Ben. Act V of 1876).

51. Any police-officer may arrest without a warrant any person committing in his view any offence against this Act, if the name and address of such person be unknown to him.

Police-officer may arrest without warrant on view of offence.

52. Any police-officer may take into custody, without a warrant, any person who is charged with committing an aggravated assault, in every case in which he shall have good reason to believe that such assault has been committed although not in his view, and that, by reason of the recent commission of the offence, a warrant could not have been obtained for the apprehension of the offender.

Police-officer may take into custody, without warrant, persons charged with aggravated assault recently committed.

53. Every person taken into custody without a warrant by a police-officer under this Act shall be taken to the nearest police-office, in order that such person may be detained until he can be brought before the Magistrate, or until he shall enter into recognizances, with or without sureties for his appearance before the Magistrate.

Persons taken into custody by a police-officer, without warrant, may be detained in police-office until brought before Magistrate,* or bailed.

Any person so detained and not entering into recognizances shall be carried before the Magistrate within twenty-four hours from the time of his being taken into custody.

of 1857.]

(Sections 54—59.)

54. Upon any information or complaint laid before the Magistrate of any offence committed against this Act, the Magistrate may summon the person charged to appear at a time to be mentioned in the summons, or, if he sees sufficient cause for so doing, may issue a warrant for his apprehension.

Procedure on information or complaint laid before the Magistrate of an offence against this Act.

In all cases of offences punishable with fine only, if after due service of summons the person charged shall not appear in pursuance thereof, the Magistrate, at his discretion, may hear and determine the case in his absence.

2 *

55. [Recovery of costs or expenses.]—Rep. by the Amending Act, 1903 (I of 1903).

56. Any Joint Magistrate or Deputy Magistrate duly authorized to exercise the powers of a Magistrate, and any Assistant vested with special powers may, in cases referred to him by the Magistrate, exercise all the powers vested in a Magistrate by this Act.

Jurisdiction.

57. [Application of fines.]—Omitted by the First Schedule of the Government of India (Adaptation of Indian Laws) Order, 1937.

58. [Supersession of Act XXI of 1841.]—Rep. by the Amending Act, 1891 (XII of 1891).

59. [Interpretation.]—Rep. by sec. 18(c) of the West Bengal Gambling and Prize Competitions Act, 1957 (West Ben. Act XXXII of 1957).

¹Words repealed by the Amending Act, 1903 (I of 1903), are omitted.

²The words "Provided also that no appeal shall lie from any order of a Magistrate passed with the sanction of the Lieutenant Governor of Bengal under section 49 of this Act" which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

[Act XXI of 1857.]

(Schedule.)

1 SCHEDULE

Of places included in the * * * * *Station of Howrah*

STATION OF HOWRAH.

Howrah (including)

Panchánantalá.
 Juláhápárá.
 Chándmári (with Tandel Bágán).
 North Betrá.
 South Betrá.
 Ichápur.
 Saunpur.
 Goládángá.
 Rámkrishnapur.
 Khurát (with Kasaondiyá).
 Chakarber.
 Santrágáchhi.
 Sathgharra.
 Gudár Hát (with Kinkar Chatterjea's Hát).
 Battore.

Sibpur (with Baji Sibpur, Majerhát, Bharpára, Bhattatalá, Sriharinaupára, Bishop's College and Company's Botanical Garden).

Padmapukhar.
 South Baksará.
 North Baksará.

Salkiya (including)

Bándághát (with Haraganj and Bánurjyapára).
 Ghoosery (with Bhát Bágán).
 Málipánchghará.
 Barrackpore.
 Bellur.
 Naksha.
 Chakpára.
 Nallua.
 Belgáchhiyá (with Paikán Belgáchhiyá).
 Báhmangachi.
 Chaurásta (with Dharmtalá, Goghátá and Bábudángá).
 Golábári (with Filkhána).

¹This Schedule is referred to in section 1, *ante*.

²The words: "Suburbs of Calcutta and" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

³The words "Suburbs of Calcutta" were repealed, *ibid*.

¹Act XXXI of 1858

(The Bengal Alluvial Land Settlement Act, 1858)²

SHORT TITLE GIVEN ... Act I of 1903.

REPEALED IN PART ... Act I of 1903.

(24th August 1858.)

An Act to make further provision for the settlement of land gained by alluvion in the Presidency of Fort William in Bengal.

Whereas for the removal of doubts respecting the course proper to be followed in the settlement of land added by alluvial accession to estates paying revenue to Government, it is expedient to lay down certain rules to be observed in the settlement of such land ; It is enacted as follows :—

Preamble.

1. When land added by alluvial accession to an estate paying revenue to Government becomes liable to assessment, if it be so agreed on between the Revenue-authorities and the proprietor or proprietors, the revenue assessed upon the alluvial land may be added to the *jama* of the original estate ; and in such case a new engagement shall be executed for the payment of the aggregate amount, and that amount shall be substituted in the Collector's rent-roll for the former *jama* of the original estate.

Addition of revenue assessed upon alluvial land to *jama* of original estate.

If the proprietor or proprietors object to such an arrangement, or if the Revenue-authorities are of opinion that a settlement of the alluvial land cannot properly be made for the same term as the existing settlement of the original estate, the alluvial land shall be assessed and settled as a separate estate with a separate *jama*, and shall thenceforward be regarded and treated as in all respects separate from and independent of the original estate, whether the separate settlement be made with the proprietor or proprietors or the land be let in farm in consequence of the refusal of the proprietor or proprietors to accept the terms of settlement.

When separate settlement to be made.

The separate settlement may be permanent, if the settlement of the original estate is permanent.

2. Nothing contained in the preceding section shall affect the rights of any under-tenant in any alluvial land under the provisions of clause 1, section 4, Regulation XI, 1825³.

Rights of under-tenants in alluvial land.

¹This Act shall stand repealed with the coming into force of clause (3) of section 59 of the West Bengal Land Reforms Act, 1955 (West Bengal Act X of 1956).

²SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Act was passed for the whole of the former Province of Bengal—see the title.

It has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), sec. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), sec. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

³The Bengal Alluvion and Diluvion Regulation, 1825.

[Act XXI of 1858.]

(Section 3.)

It shall be the duty of all officers making settlements of such land, whether the land be settled separately or incorporated with the original estate, to ascertain and record all such rights according to the rules prescribed in Regulation VII, 1822¹; and to determine whether any and what additional rent shall be payable in respect of the alluvial land by the person or persons entitled to any under-tenure in the original estate.

The provisions of the said Regulation¹, so far as the same may be applicable, are hereby declared to extend to all settlements made under this Act.

3. [*Separate settlements heretofore made ; saving of rights.*—*Rep. by the Amending Act, 1903 (I of 1903).*]

¹The Bengal Land-revenue Settlement Regulation, 1825.

Act V of 1859

(The Bengal Ghatwali Lands Act, 1859.)¹

SHORT TITLE GIVEN

Act I of 1903.

ADAPTED

...

(a) The Government of India
(Adaptation of Indian Laws)
Order, 1937.

(b) The Adaptation of Laws
Order, 1950.

(4th March 1859.)

An Act to empower the holders of ghatwali lands in the district of Birbhum to grant leases extending beyond the period of their own possession.

Whereas it has been held that the *ghatwals* of the district of Birbhum who pay the revenue of their lands directly to Government under the provisions of Regulation XXIX, 1814², of the Bengal Code, have not the power of alienating their lands ;

Preamble.

And whereas, for the development of the mineral resources of the country in which the said *ghatwali* lands are situate, and for the improvement of the said lands, it is expedient that the power of granting leases for periods not limited by the term of their own possession should in certain cases be extended to the possessors of such lands :—

It is enacted as follows :—

1. *Ghatwals* holding lands in the district of Birbhum under the provisions of the aforesaid Regulation shall have the same power of granting leases for any period which they may deem most conducive to the improvement of their tenures as is allowed by law to the proprietors of other lands :

Right of
ghatwals
of Bir-
bhum to
grant
leases.

Provided that no lease of *ghatwali* lands for any period extending beyond the lifetime or incumbency of the grantor of the lease shall be valid and binding on the successors of the grantor, unless the same shall be granted for the working of mines or for the clearing of jungle, or for the erection of dwelling houses or manufactories, or for tanks, canals and similar works, and shall be approved by the Commissioner of the Division, such approval being certified by an endorsement on the lease under the signature of the Commissioner.

Proviso.

¹SHORT TITLE.— This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.— This Act was passed only for the district of Birbhum— see the title and sec. 1.

²The Bengal Ghatwali Lands Regulation, 1814.

(Section 2.)

Court of
Wards
and Rev-
enue
authorities
have like
power
in certain
cases.

2. If any of the said *ghatwali* lands be at any time under the superintendence of the Court of Wards, or otherwise subject to the direct control of the officers of ¹[the Government], it shall be lawful for the Court of Wards or the Commissioner to grant leases for any such purpose as aforesaid ; and every lease so granted shall be valid and binding on all future possessors of the said lands, anything in the existing law to the contrary notwithstanding.

¹The word "Crown" was substituted for the word "Government" by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "Government" was subsequently substituted for the word "Crown" by paragraph 4 (i) of the Adaptation of Laws Order, 1950.

Act X of 1859
(The Bengal Rent Act, 1859.)

ARRANGEMENT OF SECTIONS.

Preamble.

Section.

1. *(Repealed.)*
2. *Raiyat* entitled to *patta*.
3. *Raiyats* holding land at fixed rates to receive *pattas*.
4. If rent of land be not changed for twenty years.
5. *Raiyats* having right of occupancy, but not holding at fixed rates, to receive *pattas*.
6. Right of occupancy of *raiya*t cultivating or holding land for twelve years.
7. Saving of terms of written contracts.
8. *Pattas* to *raiya*ts not having rights of occupancy.
9. Person granting *patta* entitled to counterpart-engagement.
10. Exactions in excess of rent or receipt withheld.
Form of receipt.
11. Landholder not to compel attendance of tenant for adjustment of rent, etc.
Payment of rent how enforced.
12. Damages for extorting payment of rent by duress.
13. Enhancement of rent of *raiya*t holding without, or after expiry, etc., of written engagement.
14. Mode of contesting enhancement of rent.
15. Dependent *talukdar*, etc., holding at fixed rent without change since permanent settlement, not liable to enhancement.
16. Rent of *talukdar*, etc., not changed for twenty years to be *prima facie* evidence of occupancy at that rent since permanent settlement.
17. Rent of *raiya*t having right of occupancy not to be enhanced unless—rate paid by him is below that prevailing in adjacent places; value of land, etc., has increased, independently of *raiya*t; quantity of land held by *raiya*t is greater than he has paid rent for.
18. When *raiya*t may claim abatement of rent.
19. Relinquishment of land by *raiya*t after notice.
20. What to be deemed arrear of rent.
21. Liability of *raiya*t to be ejected for arrear due.
Proviso.
22. Liability of farmer to have lease cancelled for arrear adjudged due.
Proviso.
23. Cognizance of suits under Act.
24. Suits by *zamindars* against agents for money or accounts.
25. Ejectment of cultivators, farmers, etc., by *zamindars*.
Proviso.
26. *(Repealed.)*
27. Registry of transfers of *taluks*, etc.
Proviso.
28. Applications to dispossess grantees of land exempt from revenue.
29. Suits by or against *sarbarahkars* or *tahsildars* of estates held *khas*.
30. Commencement of suits generally.

Section.

31. Suits for grant of *pattas*, etc.
32. Suits for arrears of rent.
Proviso.
33. Suits against agents for money, papers or accounts.
Proviso.
34. Mode of instituting suits. Form of **plaint** or statement of claim.
35. Statement by whom presented.
36. Verification of statement.
Punishment for false verification.
37. (*Repealed.*)
38. Documentary evidence to be produced by plaintiff.
39. Production of document required by plaintiff from defendant.
40. (*Repealed.*)
41. **Plaint** in suit for ejectment of *raiyat*, etc., or for recovery of occupancy or possession of land, etc.
42. Statement may be returned or allowed to be amended.
43. Issue of summons; personal attendance of defendant may be required.
44. **Day** to be specified in summons how fixed. Defendant to produce necessary documents, and bring witnesses willing to attend without process.
45. Summons how served.
46. Endorsement by *nazir* on summons.
47. Execution of process in other district.
48. Cost of serving summons or warrant to be deposited.
49. Warrant of arrest in what cases issued.
50. Procedure after arrest of defendant.
51. Procedure on defendant being brought before Collector.
Form of security-bond.
52. Procedure if warrant cannot be served.
53. Compensation for arrest applied for without reasonable cause.
54. Consequence of neither party appearing on day of trial.
55. When Collector to pass judgment by default; and when to decree upon admission.
Proviso.
56. If plaintiff only appear, Collector may proceed *ex parte*.
57. Defendant appearing at postponed **hearing** may be heard in answer.
58. Revival, reversal and alteration of decrees *ex parte* or by default.
59. On appearance, parties to be examined by Collector, and may cross-examine each other.
60. Examination of parties, etc.
61. Witnesses to be examined.
62. Documentary evidence to be produced by defendant.
63. After examination, Collector may make decree if no further evidence required.
64. **Consequence** of inability of agent to answer.
65. If necessary, Collector to record issue, and to fix day for hearing further evidence.
66. Parties to produce witnesses on day of trial, or Collector, on application, to summon witness.
67. Rules regarding attendance, examination, etc., of witnesses.
68. Consequence of parties not appearing on day fixed for trial of issue.
69. Suits by and against *naibs*, *gumashtas*, etc.
70. **Personal attendance when not required.**

of 1859.]

Section.

71. Employment of authorized agents or *mukhtars*.
72. Collector may grant time to adjourn hearing.
73. Collector may cause local inquiry to be made.
74. (*Repealed.*)
75. No interest on deposits.
76. Collector when to fix term for which *patta* is to be granted.
Proviso.
77. In suits for rent, third person claiming to be made party.
Proviso.
78. Suits for ejectment or cancelment of lease.
79. (*Repealed.*)
80. If person required by decree refuse to grant *patta*, Collector may do so.
81. Refusal to execute *kabuliyat* as required by decree.
82. Mode of executing decree for ejectment or re-instatement of *raiya*.
Punishment for obstructing execution.
83. Execution of decree for cancelment of lease or ejectment or re-instatement of farmer or tenant.
84. When judgment-debtor may be detained or imprisoned without issue of process of execution.
85. Liability of surety on failure to deliver judgment-debtor into custody.
86. (*Repealed.*)
87. Application for execution against moveable property.
88. Duration of warrant.
89. Second and successive warrants.
90. After one year execution not to issue without notice.
91. Notice of execution against representative.
92. Execution after three years from date of judgment.
93. Warrant against person.
Limit of imprisonment.
If arrest be for non-delivery of accounts.
94. No second imprisonment under same judgment.
95. Deposit of diet-money.
96. Payment of diet-money in advance during imprisonment.
97. Diet-money to be costs in suit.
98. List of property taken in execution and proclamation of sale.
99. Custody and sale of moveable property taken in execution.
100. Collector may stay sale of moveable property seized, if third party claim interest therein.
101. Collector to adjudicate such claims.
102. Claimant failing to establish right liable to compensate judgment-creditor.
103. No appeal from order under sections 101, 102.
Proviso.
104. Sale not vitiated by irregularity in publishing or conducting.
Proviso.
105. Sale of transferable tenures in execution of decrees for arrears of rent.
106. If third party claim to be lawful possessor of tenure, Collector to stay sale and to inquire and adjudicate.
Proviso.
107. Mode of adjudicating claims.

Section.

108. Execution of decrees given in favour of shares in undivided estates or tenures.
109. If execution against immoveable property when money-decree cannot be otherwise satisfied.
110. Execution—
 against house or building;
 against saleable under-tenure;
 if it be an estate or a share of an estate.
111. Consequence of objection offered before sale of immoveable property.
112. Produce of land held hypothecated for rent.
 Arrears of rent recoverable by distraint under following rules.
 Cultivators who have given security exempt from distraint.
 Proviso.
113. Distraint when barred.
114. Power of distraint of managers under Court of Wards, etc.
 Proviso.
115. Standing crops and crops gathered but not stored liable to distraint.
116. Defaulter to be served with written demand, etc., before or at time of distraint.
117. Distress proportionate to arrear.
 List of property served on owner.
118. Standing crops, etc., when attached, to be reaped and stored by cultivator, or if he neglect to do so, by distrainer.
119. Distrainer may apply for aid to Collector in case of resistance.
120. Servants employed to distraint to be furnished with written authority.
121. Distress withdrawn if defaulter tender payment of arrear and expenses prior to sale.
122. Application for sale.
123. Form of application.
 Deposit of cost of notice to defaulter.
124. Procedure of *amin* on receipt of application.
125. *Amin* to suspend sale on receipt of Collector's certificate of institution of suit.
126. Suit to contest distrainer's demand before notice of sale.
127. Distress withdrawn on receipt of Collector's certificate of execution of bond to pay amount due.
128. On expiration of period fixed in proclamation of sale if institution of suit to contest demand not certified, sale may proceed.
129. Place and manner of sale of distrained property.
130. If fair price not offered, sale may be postponed, and shall be then completed whatever price offered.
131. Payment of purchase-money.
132. Disposal of proceeds of sale.
133. Officers holding sales prohibited from purchasing.
 Officer not to sell, if he find that defaulter has not received notice.
134. Irregularities to be reported to Collector.
135. Recovery of expenses if *amin* proceeds to place of sale and no sale takes place.
136. Proceedings of *amins*, etc., subject to revision and orders of Collectors.
137. Second proclamation of sale.
138. Procedure after institution of suit to contest demand.
139. Owner of property distrained for arrears alleged to be due from another may institute suit against distrainer, etc.
 Proviso,

of 1859.]

Section.

- 140. Procedure if right to distrain be disputed.
- 141. Persons prevented from suing in time to save property from sale may sue for damages.
- 142. Also persons aggrieved by illegal act of distrainer.
- 143. Unlawful distraint.
- 144. Time for commencing suits for damages.
- 145. Resistance of distraint.
- 146. Service of process.
- 147. Resistance of process.
- 148. Place of holding Court.
Proviso.
- 149. } (*Repealed.*)
- 150. }
- 151. Control of Collectors and Deputy Collectors.
No appeal from orders of Collectors and Deputy Collectors in certain cases.
- 152. Time for presenting appeals from orders.
- 153. When appeal allowed from judgment of Collector for money below one hundred rupees.
- 154. Re-hearing in suits not open to appeal.
- 155. Appeal from decision of Deputy Collector.
- 156. Petition of appeal.
- 157. Procedure in appeal.
- 158. Re-admission of appeal.
- 159. Judgment in appeal.
- 160. In what suits appeal to lie to Zila Judge,
to Sadar Court.
- 161. Presentation and hearing of appeals.
- 162. (*Repealed.*)
- 163. No jurisdiction in Collector as to lands beyond district.
- 164. Deputy Collector when not to exercise judicial powers.
- 165. Powers to be exercised by Assistants to Collectors.
- 166. Saving of rights of proprietors as to tenures under Reg. VIII, 1819.
- 167. (*Repealed.*)
- 168. " Civil Jail."
" Nazir."

Schedule.

Forms A to G.

1 Act X of 1859 (The Bengal Rent Act, 1859.)¹

SHORT TITLE GIVEN	...	...	Act I of 1903.
			Act XXXVI of 1860.
			Act XX of 1865.
			Act VII of 1870.
REPEALED IN PART	...		Act XIV of 1870.
			Act XII of 1861.
			Ben. Act VI of 1862.
AMENDED	...	...	Ben. Regn. IV of 1945.
REPEALED IN PART AND AMENDED			Act I of 1903.
REPEALED (LOCALLY) IN BENGAL			Act VIII of 1885.
			(a) The Government of India (Adaptation of Indian Laws) Order, 1937.
			(b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.
ADAPTED	...	...	(c) The Adaptation of Laws Order, 1950.

(29th April, 1859.)

An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.

Whereas it is expedient to re-enact with certain modifications the provisions of the existing law relative to the rights of raiyats with respect to the delivery of *pattas* and the occupancy of land, to the prevention of illegal exaction and extortion in connection with demands of rent, and to other questions connected with the same ; to extend the jurisdiction of Collectors, and to prescribe rules for the trial of such questions, as well as of suits for the recovery of arrears of rent, and of suits arising out of the distraint of property for such arrears ; and to amend the law relating to distraint.

Preamble.

It is enacted as follows :—

1. [*Laws repealed and modified.*]*—Rep. by the Repealing Act, 1870 (XIV of 1870).*

2. Every *raiya*t is entitled to receive, from the person to whom the rent of the land held or cultivated by him is payable, a *patta* containing the following particulars :—

Raiyat entitled to patta.

the quantity of land ; and, where fields have been numbered in a Government survey, the number of each field ;

¹ This Act shall stand repealed with the coming into force of clause (4) of section 59 of the West Bengal Land Reforms Act, 1955 (West Bengal Act X of 1956).

SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903).

LOCAL EXTENT.—This Act applied originally to the whole of Bengal as constituted in 1859 (see the title and section 3). But it has been repealed by the Bengal Tenancy Act, 1885 (VIII of 1885), sec. 2 (1), everywhere except “the town of Calcutta, the Division of Orissa and the Scheduled Districts”.

The extension of the repeal to Scheduled Districts depends upon the terms of notifications extending the Act of 1885 to such districts. Under the terms of the notifications extending the Act of 1885 to the Jalpaiguri district, the repeal has taken effect in that district.

The only portion of the present West Bengal in which Act X of 1859 appears to be in force is the Darjeeling district.

The Bengal Rent Act, 1859.

[Act X

(Sections 3—6.)

the amount of annual rent ;
the instalments in which the same is to be paid ;
and any special conditions of the lease ;
if the rent is payable in kind, the proportion of produce
to be delivered and the time and manner of delivery.

Raiyats
holding
land at
fixed
rates to
receive
pattas.

3. Raiyats who, in the ¹[States] of ²[West Bengal], [Bihar, Orissa,] ³* * hold lands at fixed rates of rent which have not been changed from the time of the permanent settlement, are entitled to receive *pattas* at those rates.

If rent of
land be not
changed
for twenty
years.

4. Whenever, in any suit under this Act, it shall be proved that the rent at which land is held by a *raiyyat* in the said ¹[States] has not been changed for a period of twenty years before the commencement of the suit, it shall be presumed that the land has been held at that rent from the time of the permanent settlement, unless the contrary be shown or unless it be proved that such rent was fixed at some later period.

Raiyats
having
right of
occupancy
but not
holding at
fixed rate,
to receive
pattas.

5. Raiyats having rights of occupancy, but not holding at fixed rates as described in the two preceding sections, are entitled to receive *pattas* at fair and equitable rates.

In case of dispute, the rate previously paid by the *raiyyat* shall be deemed to be fair and equitable, unless the contrary be shown in a suit by either party under the provisions of this Act.

Right of
occupancy
of *raiyyat*
cultivating
or holding
land for
twelve
years.

6. Every *raiyyat* who has cultivated or held land for a period of twelve years has a right of occupancy in the land so cultivated or held by him, whether it be held under *patta* or not, so long as he pays the rent payable on account of the same ; but this rule does not apply to *khamar*, *nijjot* or *sir* land belonging to the proprietor of the estate or tenure and let by him on lease for a term or year by year, nor (as respects the actual cultivator) to lands sublet for a term or year by year by a *raiyyat* having a right of occupancy.

The holding of the father or other person from whom a *raiyyat* inherits shall be deemed to be the holding of the *raiyyat* within the meaning of this section.

¹Substituted for the word "Provinces" by paragraph 4 (1) of the Adaptation of Laws Order, 1950.

²Substituted for the word "Bengal" by para. 3 (2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³The words "and Benares" which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

of 1859.]

(Sections 7—12.)

7. Nothing contained in the last preceding section shall be held to affect the terms of any written contract for the cultivation of land entered into between a landholder and a *raiyat* when it contains any express stipulation contrary thereto.

Saving of terms of written contracts.

8. *Raiyats* not having rights of occupancy are entitled to *pattas* only at such rates as may be agreed on between them and the persons to whom the rent is payable.

Pattas to *raiya*ts not having rights of occupancy.

9. Every person who grants a *patta* is entitled to receive from the person to whom the *patta* is granted a *kabuliyat* or counterpart-engagement in conformity with the terms of the *patta*.

Persons granting *patta* entitled to counterpart-engagement.

The tender to any *raiyat* of a *patta* such as the *raiyat* is entitled to receive shall be held to entitle the person to whom the rent is payable to receive a *kabuliyat* from such *raiyat*.

10. Every under-tenant or *raiyat* from whom any sum is exacted in excess of the rent specified in his *patta*, or payable under the provisions of this Act, whether as *abwab* or under any other pretext, and every under-tenant, *raiyat* or cultivator from whom a receipt is withheld for any sum of money paid by him as rent shall be entitled to recover from the person receiving such rent damages not exceeding double the amount so exacted or paid.

Exactions in excess of rent or receipt withheld.

Receipts for rent shall specify the year or years on account of which the rent is acknowledged to have been paid; and any refusal to make such specification shall be held to be a withholding of a receipt.

Form of receipt.

11. The power heretofore vested in *zamindars* and other landholders of compelling the attendance of their tenants for the adjustment of their rents or for any other purpose is withdrawn, and all such persons are prohibited from adopting any means of compulsion for enforcing payment of the rents due to them other than are authorized by the provisions of this Act.

Landholder not to compel attendance of tenant for adjustment of rent, etc. Payment of rent how enforced.

12. If payment of rent, whether the same be legally due or not, is extorted from any under-tenant or *raiyat* by illegal confinement or other duress, such under-tenant or *raiyat* shall be entitled to recover such damages, not exceeding in any case the sum of two hundred rupees, as may be deemed a reasonable compensation for the injury done him by such extortion.

Damages for extorting payment of rent by duress

(Sections 13—15.)

An award of compensation under this section shall not bar or affect any penalty or punishment to which the person practising such extortion may be subject by law.

Enhancement of rent of *raiyyat* holding without or after expiry, etc., of written engagement.

13. No under-tenant or *raiyyat* who holds or cultivates land without a written engagement, or under a written engagement not specifying the period of such engagement, or whose engagement has expired, or has become cancelled in consequence of the sale for arrears of rent or revenue of the tenure or estate in which the land held or cultivated by him is situate, and has not been renewed, shall be liable to pay any higher rent for such land than the rent payable for the previous year, unless a written notice shall have been served on such under-tenant or *raiyyat*, in or before the month of *Chaitra*¹ specifying the rent to which he will be subject for the ensuing year, and the ground on which an enhancement of rent is claimed.

Such notice shall be served by order of the Collector on the application ² * * * of the person to whom the rent is payable, and shall, if practicable, be served personally on the under-tenant or *raiyyat*.

If for any reason the notice cannot be served personally upon the under-tenant or *raiyyat*, it shall be affixed at his usual place of residence, or, if he have no such place of residence in the district in which the land is situate, the mode of service of such notice shall be by affixing it at the *mal-cutcherry* of such land or other conspicuous place thereon, or at the village *chauri* or *chaupal*, or at some other conspicuous place in the village in which the land is situate.

Mode of contesting enhancement of rent.

14. Any under-tenant or *raiyyat* on whom such notice as aforesaid has been served may contest his liability to pay the enhanced rent demanded of him, either by complain of excessive demand of rent as hereinafter provided, or in answer to any suit preferred against him for recovery of arrears of the enhanced rent.

Dependent *talukdar*, etc., holding at fixed rent without change since permanent settlement not liable to enhancement.

15. No dependent *talukdar* or other person possessing a permanent transferable interest in land, intermediate between the proprietor of an estate and the *raiyyats*, who, in the ³[States] of ⁴[West Bengal], [*Bihar, Orissa*] ⁵ * * * holds his *taluk* or tenure (otherwise than under a terminable lease) at a fixed rent which has not been changed from the time of the permanent settlement, shall be liable to any enhancement of such rent, anything in section 51, Regulation VIII, 1793⁶, or in any other law to the contrary notwithstanding.

¹ The month of *Chaitra* corresponds with the last part of March and the first part of April.

² The words "which may be on plain paper," which were repealed by the Court-fees Act, 1870 (VII of 1870), are omitted.

³ See foot-note 1 on Page 344, ante.

⁴ See foot-note 2 on Page 344, ante.

⁵ The words "and *Bihar*," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

⁶ The Bengal Decennial Settlement Regulation, 1793.

of 1859.]

(Sections 16—19.)

16. Whenever, in any suit under this Act, it shall be proved that the rent at which a *taluk* or other tenure is held in the said ¹[States] has not been changed for a period of twenty years before the commencement of the suit, it shall be presumed that such *taluk* or tenure has been held at that rent from the time of the permanent settlement, unless the contrary be shown, or it be proved that such rent was fixed at some later period.

Rent of *talukdar*, etc., not changed for twenty years to be *prima facie* evidence of occupancy at that rent since permanent settlement.

17. No *raiyat* having a right of occupancy shall be liable to an enhancement of the rent previously paid by him except on some one of the following grounds, namely :—

that the rate of rent paid by such *raiyat* is below the prevailing rate payable by the same class of *raiyyats* for land of a similar description and with similar advantages in the places adjacent ;

that the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the *raiyat* ;

that the quantity of land held by the *raiyat* has been proved by measurement to be greater than the quantity for which rent has been previously paid by him.

Rent of *raiyat* having right of occupancy not to be enhanced unless—rate paid by him is below that prevailing in adjacent places ; value of land, etc., has increased, independently of *raiyat* ; quantity of land held by *raiyat* is greater than he has paid rent for.

18. Every *raiyat* having a right of occupancy shall be entitled to claim an abatement of the rent previously paid by him, if the area of the land has been diminished by diluvion or otherwise, or if the value of the produce or the productive powers of the land have been decreased by any cause beyond the power of the *raiyat*, or if the quantity of land held by the *raiyat* has been proved by measurement to be less than the quantity for which rent has been previously paid by him.

When *raiyat* may claim abatement of rent.

19. Any *raiyat* who desires to relinquish the land held or cultivated by him shall be at liberty to do so provided he gives notice of his intention in writing to the person entitled to the rent of the land, or his authorised agent in or before the month of *Chaitra*² of the year preceding that in which the relinquishment is to have effect.

Relinquishment of land by *raiyat* after notice.

¹See foot-note 1 on page 344, *ante*.

²The month of *Chaitra* corresponds with the last part of March and the first part of April.

(Sections 20—23.)

If he fail to give such notice, and the land is not let to any other person, he shall continue liable for the rent of the land.

If the person entitled to the rent of the land, or his agent refuse to receive any such notice and to sign a receipt for the same, the *raiyyat* may make an application ¹* * * to the Collector, who shall thereupon cause the notice to be served on such person or his agent in the manner provided in section 13.

What to
be deemed
arrear of
rent.

²20. Any instalment of rent which is not paid on or before the day when the same is payable according to the *patta* or engagement, or, if there be no written specification of the time of payment, at or before the time when such instalment is payable according to established usage, shall be held to be an arrear of rent under this Act, and, unless otherwise provided by written agreement, shall be liable to interest at twelve *per centum per annum*.

Liability
of *raiyyat*
to be
ejected
for arrear
due:

21. When an arrear of rent remains due from any *raiyyat* at the end of the ³[West Bengal] year⁴ or at the end of the month of *Jeth*⁵ of the [*Fasli* or] *Wilaiyati* year, as the case may be, such *raiyyat* shall be liable to be ejected from the land in respect of which the arrear is due :

Proviso.

Provided that no *raiyyat* having a right of occupancy or holding under a *patta* the term of which has not expired shall be ejected otherwise than in execution of a decree or order under the provisions of this Act.

Liability
of farmer
to save
lease
cancelled
for arrear
adjudged
due.

22. When an arrear of rent shall be adjudged to be due from any farmer or other leaseholder not having a permanent or transferable interest in the land, the lease of such leaseholder shall be liable to be cancelled and the leaseholder to be ejected :

Proviso.

Provided that no such lease shall be cancelled nor the leaseholder ejected otherwise than in execution of a decree or order under the provisions of this Act.

Cogni-
zance of
suits under
Act.

23. (1) All suits for the delivery of *pattas* or *kabuliyats* or for the determination of the rates of rent at which such *pattas* or *kabuliyats* are to be delivered ;

¹The words "on plain paper," which were repealed by the Court-fees Act, 1870 (VII of 1870), are omitted.

²In the application of this Act to the District of Darjeeling for the word "twelve" substitute the words "six and a quarter", *vide* section 3 of Bengal Regulation IV of 1945.

³See foot-note 2 on Page 344, *ante*.

⁴The month of *Chaitra* corresponds with the last part of March and the first part of April.

⁵The month of *Jeth* corresponds with the last part of May and the first part of June.

of 1859.]

(Sections 24, 25.)

(2) all suits for damages on account of the illegal exaction of rent or of any unauthorised cess or impost, or on account of the refusal of receipts for rent paid, or on account of the extortion of rent by confinement or other duress ;

(3) all complaints of excessive demand of rent, and all claims to abatement of rent ;

(4) all suits for arrears of rent due on account of land either *khiraji* or *lakhiraj*, or on account of any rights of pasturage, forestrights, fisheries or the like ;

(5) all suits to eject any *raiya*, or to cancel any lease on account of the non-payment of arrears of rent, or on account of a breach of the conditions of any contract by which a *raiya* may be liable to ejectment or a lease may be liable to be cancelled ;

(6) all suits to recover the occupancy or possession of any land, farm or tenure, from which a *raiya*, farmer or tenant has been illegally ejected by the person entitled to receive rent for the same ;

(7) all suits arising out of the exercise of the power of distraint conferred on *zamindars* and others by sections 112 and 114 of this Act, or out of any acts done under colour of the exercise of the said power as hereinafter particularly provided,

shall be cognizable by the Collectors of land-revenue and shall be instituted and tried under the provisions of this Act and, except in the way of appeal as provided in this Act, shall not be cognizable in any other Court or by any other officer or in any other manner.

24. Suits by *zamindars* and others in receipt of the rent of land, against any agents employed by them in the management of land or collection of rents, or the sureties of such agents, for money received or accounts kept by such agents, in the course of such employment, or for papers in their possession, shall be cognizable by the Collectors, and shall be instituted and tried under the provisions of this Act, and shall not be recognisable in any other Court except in the way of appeal as provided in this Act.

Suits by
zamindars
against
agents for
money or
accounts.

25. If any *zamindar* or other person in receipt of the rent of land requires assistance to eject any cultivator not having a right of occupancy, or to eject any farmer or other tenant holding only for a limited period after the determination of his lease or tenancy, or any agent after the determination of his agency, or to enforce any attachment or ejectment expressly authorized by any Regulation or Act, he shall make application to the Collector, and the Collector shall proceed thereupon to inquire into the case and pass orders in the manner provided for suits under this Act :

Ejectment
of cultiva-
tors,
farmers,
etc., by
zamindars.

Provided that on such application for the ejectment of a farmer on the determination of a lease shall be received, if the lease be of the kind denominated *thika*, *zaripeshgi*, or the like, in which an advance has been made by the leaseholder, and the

Proviso.

(Sections 26—28.)

proprietor's right of re-entry at the end of the term is contingent on the repayment of such advance either in money or by the usufruct of the land. In all such cases the parties must proceed by suit in the Civil Court.

26. [*Measurement of land.*—Rep. by the Bengal Rent Act, 1862 (Ben. Act VI of 1862).

Registry of
transfers of
taluks, etc.

27. All dependent *talukdars* and other persons possessing a permanent transferable interest in land intermediate between the *zamindar* and the cultivator are required to register in the *sarishta* of the *zamindar* or superior tenant to whom the rents of their *taluks* or tenures are payable, all transfers of such *taluk* or tenures or portions of them, by sale, gift or otherwise, as well as all successions thereto, and divisions among heirs in cases of inheritance.

And every *zamindar* or superior tenant is required to admit to registry and otherwise give effect to all such transfers, when made in good faith, and all such successions and divisions.

If any *zamindar* or superior tenant refuse to admit to registry or otherwise give effect to any such transfer or succession, the transferee or successor may make application to the Collector, and the Collector shall thereupon proceed to inquire into the case in the manner provided for suits under this Act, and, if no sufficient grounds are shown for the refusal, shall pass an order enjoining the *zamindar* or superior tenant to admit to registry and otherwise give effect to such transfer or succession :

Proviso.

Provided that no *zamindar* or superior tenant shall be required to admit to registry or give effect to any division or distribution of the rent payable on account of any such tenure, nor shall any such division or distribution of rent be valid and binding without the consent in writing of the *zamindar* or superior tenant.

Applica-
tions to
dispossess
grantees of
land exempt
from
revenue.

28. So much of section 10, Regulation XIX, 1793¹, * * * and section 24, Regulation XII, 1805², as authorizes and requires proprietors and farmers of estates and dependent *taluks*, in cases in which grants for holding land exempt from the payment of revenue have been made subsequent to the dates specified in the said sections, of their own authority to collect the rents of such land and to dispossess the grantees of the proprietary right in the land and to re-annex it to the estate or *taluk* in which it may be situate, is repealed; and any proprietor or farmer who may desire to assess any such land or to dispossess any such grantee shall make application to the Collector, and such application shall be dealt with as a suit under the provisions of this Act.

¹The Bengal Revenue-free Lands (Non-Badshahi Grants) Regulation, 1793.

²The words and figures "section 10, Regulation 41, 1795, section 6, Regulation 31, 1803, section 21, Regulation 8, 1805," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

³The Cuttack Land-revenue Regulation, 1805.

of 1859.]

(Sections 29—32.)

Every such suit shall be instituted within the period of twelve years from the time when the title of the person claiming the right to assess the land or dispossess the grantee, or of some person claiming under him, first accrued.

1* * *

29. All suits which under the provisions of this Act may be brought by or against *zamindars* or other persons in the receipt of the rent of land may be brought by or against *sarbarakars* or *tahsildars* of estates held under *khas* management, whether such estates are the property of ²[the Government] or of individuals.

3* * *

Suits by or against *sarbarakars* or *tahsildars* of estates held *khas*.

30. Except as otherwise herein provided, all suits instituted under this Act shall be commenced within the period of one year from the date of the accruing of the cause of action.

Commencement of suits generally;

31. Suits for the delivery of *pattas* or *kabuliyaats*, and for the determination of the rates of rent at which such *pattas* or *kabuliyaats* are to be delivered, may be instituted at any time during the tenancy.

suits for grant of *pattas*, etc.;

32. Suits for the recovery of arrears of rent shall be instituted within three years from the last day of the ⁴[West Bengal] year⁵, or from the last day of the month of *Jeth*⁶ of the [Fasli or] *Wilayati* year, in which the arrear claimed shall have become due.

suits for arrears of rent.

7*

Provided that, if the suit be for the recovery of rent at a higher rate than was payable in the previous year, such rent having been enhanced after issue of notice under section 13, and the enhancement not having been confirmed by any competent Court, the suit shall be instituted within three months

Proviso.

¹The words "If such period has already elapsed, or will elapse within two years from the date of the passing of this Act, such suit may be brought at any time within two years from such date", which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

²The words "the Crown" were substituted for the word "Government" by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "Government" was subsequently substituted for the word "Crown" by paragraph 4 (1) of the Adaptation of Laws Order, 1950.

³The remainder of sec. 29, which was repealed by the Amending Act, 1903 (I of 1903), is omitted.

⁴See foot-note 2 on page 344, ante.

⁵The West Bengal year ends with the month of *Chaitra*, which corresponds with the the last part of March and the first part of April.

⁶The month of *Jeth* corresponds with the last part of May and the first part of June.

⁷The words "For arrears of rent due at the passing of this Act, suit shall be brought within three years after the passing of this Act, or within the period now allowed for the institution of such suits in the Civil Court, whichever may first expire", which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

(Sections 33—36.)

from the end of the ¹[West Bengal] year², or of the month of *Jeth*³ of the [*Fasli* or] *Wilayati* year, on account of which such enhanced rent is claimed.

Suits
against
agents for
money,
papers or
accounts.

33. Suits for the recovery of money in the hands of an agent or for the delivery of accounts or papers by an agent may be brought at any time during the agency or within one year after the determination of the agency of such agent ⁴* * *.

Proviso.

Provided that, if the person having the right to sue shall by means of fraud have been kept from the knowledge of the receipt of any such money by the agent or if any fraudulent account shall have been rendered by the agent, the suit may be brought within one year from the time when the fraud shall have been first known to such person ; but no such suit shall in any case ⁵* * * be brought at any time exceeding three years from the termination of the agency.

Mode of
instituting
suits.
Form of
plaint or
statement
of claim.

34. Suits under this Act shall be instituted by presenting to the Collector a plaint or statement of claim which shall contain the name, description and place of abode of the plaintiff, the name, description and place of abode of the defendant, so far as they can be ascertained, the substance of the claim and the date of the cause of action.

Statement
by whom
presented.

35. The statement of claim shall be presented by the plaintiff or by an authorized agent of the plaintiff who has personal knowledge of the facts of the case, or by an agent who shall be accompanied by a person who has such knowledge.

Verifica-
tion of
statement.

36. The statement of claim shall be subscribed and verified at the foot by the plaintiff or his agent in the manner following or to the like effect :—

I, A. B., do declare that the above statement is true to the best of my knowledge and belief.

Punish-
ment for
false veri-
fication.

If the statement shall contain any averment which the person making the verification shall know or believe to be false, or shall not know or believe to be true, such person shall be subject to punishment according to the law for the time being in force for the punishment of giving or fabricating false evidence.

¹See foot-note 2 on page 344, *ante*.

²The West Bengal year ends with the month of *Chaitra*, which corresponds with the last part of March and the first part of April.

³The month of *Jeth* corresponds with the last part of May and the first part of June.

⁴The words "or, in the case of claims now existing, within one year after the passing of this Act, or within the period now allowed for the institution of such suits in the Civil Court, whichever may first expire" were repealed by the Amending Act, 1903 (I of 1903).

⁵The words "(except the case of claims now existing as aforesaid)" were repealed, *ibid*.

of 1859.]

(Sections 37—43.)

37. [Statement of claim to be written on stamped paper.]—Rep. by Act XXXVI of 1860.

38. If the plaintiff rely in support of his claim on any document in his possession, he shall deliver the same to the Collector at the time of presenting his statement of claim.

Documentary evidence to be produced by plaintiff.

Unless such document be delivered in, or its non-production be sufficiently excused, or unless the Collector see fit to extend the time for producing the same, it shall not afterwards be admitted.

39. If the plaintiff require the production of any document in the possession or power of the defendant, he may at the time of presenting his statement of claim deliver to the Collector a description of the document in order that the defendant may be required to produce the same.

Production of document required by plaintiff from defendant.

40. [Form of plaint in suits for arrears of rent.]—Rep. by the Bengal Rent Act, 1862 (Ben. Act VI of 1862).

41. If the suit be for the ejectment of a *raiyat*, farmer or tenant from any land, farm or tenure, or for the recovery of the occupancy or possession of any land, farm or tenure, the statement shall describe (as circumstances may require), the extent, situation and designation of the same; and, if necessary for the identification of the land, shall set forth the boundaries of such land.

Plaint in suit for ejectment of *raiyat*, etc., or for recovery of occupancy or possession of land, etc.

42. If the statement of claim do not contain the several particulars hereinbefore required to be specified therein, or be not subscribed and verified as hereinbefore required, the Collector may return the statement to the plaintiff, or at his discretion allow it to be amended.

Statement may be returned or allowed to be amended.

43. If the statement of claim be in proper form, the Collector, except as otherwise hereinafter specially provided, shall direct the issue of a summons to the defendant, and if the plaintiff require the personal attendance of the defendant, and satisfy the Collector that such personal attendance is necessary, or the Collector of his own accord require such personal attendance, the summons shall contain an order for the defendant to appear personally on a day to be specified in the summons; otherwise the summons shall order the defendant to appear personally or by an agent duly authorized on his behalf, who has personal knowledge of the subject, or who shall be accompanied by a person who has such personal knowledge.

Issue of summons; personal attendance of defendant may be required.

(Sections 44—49.)

Day to be specified in summons how fixed. Defendant to produce necessary documents, and bring witnesses willing to attend without process.

Summons how served.

Endorsement by nazir on summons.

Execution of process in other district.

Cost of serving summons or warrant to be deposited.

Warrant of arrest in what cases issued.

44. The day to be specified in the summons shall be fixed with reference to the state of the file and the distance that the defendant may be or be supposed to be at the time from the place where the Court is held, and the summons shall order the defendant to produce any document which he may have in his possession, of which the plaintiff demands inspection, or upon which the defendant may intend to rely in support of his defence.

It shall also enjoin him to bring with him his witnesses if they are willing to attend without issue of process, and shall be in the form (A) contained in the schedule to this Act or to the like effect.

45. The summons shall be served by delivering a copy of the summons to the defendant personally when practicable, or, if the summons cannot be served on the defendant personally, by affixing a copy of it to some conspicuous part of his usual place of abode, and also affixing a copy of the same in the Collector's office.

46. If the summons be served personally, the *nazir* shall endorse on the summons the fact of such service. If personal service be not effected, the *nazir* shall endorse on the summons the reason of not serving it personally, and how it has been served.

47. If the usual place of abode of the defendant be in another district the summons, together with the cost of the service thereof, shall be sent by the public post to the Collector of such district, who shall issue the summons, and return the same after service, with the prescribed endorsement, to the officer by whom it was transmitted to him.

48. The amount of the cost of serving the summons, or, if a warrant be issued as provided in the next succeeding section, of serving the warrant, shall in all cases be deposited in Court upon the same day or the day next following that on which the plaint or statement of claim is presented to the Collector.

If the said amount be not so deposited (except in cases in which the Collector may allow the issue of summons free of cost under the discretion reserved to him in section 146), the case shall not be brought on the file of suits; but in such case the plaintiff may present another plaint at any time within the period allowed by the rules for the limitation of actions.

49. If in any suit against an under-tenant or *raiayat* for the recovery of an arrear of rent, or against an agent for the recovery of any money, papers or accounts, the plaintiff desires a warrant of arrest to be issued against the defendant, such defendant being resident within the district in which the suit is instituted, he shall present with his statement of claim an application for the issue of such warrant.

When such application is presented, the Collector shall examine the plaintiff or his agent on his oath or affirmation or otherwise according to the law for the time being in force in

of 1859.]

(Sections 50—52.)

relation the examination of witnesses, and inspect the documents adduced by him in support of his claim, and if there be *prima facie* grounds for believing the claim to be well-founded, and that if, a summons be issued, the defendant will abscond instead of appearing to answer the claim, the Collector may issue a warrant for the arrest of the defendant.

The Collector shall fix a reasonable time for the return of the warrant, which shall be in the form (B) contained in the schedule to this Act or to the like effect, and the officer entrusted with the service of the warrant shall at the time of arresting the defendant deliver to him a notice addressed to the defendant [which shall be in the form (C) in the schedule or to the like effect] containing the particulars of the claim, and requiring the defendant, if he contest the claim, to bring with him any document upon which he may intend to rely in support of his defence.

But no such warrant shall be issued in a suit for arrears of rent due in respect of a dependent *taluk* or other transferable tenure, which, as hereinafter provided, is liable to sale in execution of any decree which may be passed in the case.

50. If a defendant be arrested under the warrant of arrest, he shall be brought with all convenient speed before the Collector, and the Collector shall commit him to custody unless he deposit in Court such sum as may be specified in the notice.

Procedure after arrest of defendant.

51. When a defendant is brought before the Collector under warrant, the Collector shall with all convenient speed proceed to try the case in the manner hereinafter provided; and if the suit cannot be at once adjudicated, the Collector may, if he think fit, require the defendant to give security for his appearance whenever the same may be required at any time whilst the suit is depending or until execution of the final decree which may be passed thereon, and may commit the defendant to the civil jail, to be there detained until he shall furnish such security or deposit such sum as the Collector shall order.

Procedure on defendant being brought before Collector.

The security-bond shall be in the form (D) contained in the schedule to this Act or to the like effect.

Form of security-bond.

52. If the defendant cannot be arrested under the warrant, the Collector, on the application of the plaintiff, shall either postpone the case for such period as he may think proper in order that the plaintiff may apply within the said period for another warrant to be issued for the arrest of the defendant, or shall forthwith issue a proclamation to be affixed in his own office and at the residence of the defendant fixing a day for the hearing of the case, which shall not be less than ten days from the date of the publication of the notice at the residence of the defendant.

Procedure if warrant cannot be served.

If the defendant shall appear in pursuance of the proclamation, he shall be dealt with as provided in the last preceding section.

(Sections 53—58.)

Compensation for arrest applied for without reasonable cause.

Consequence of neither party appearing on day of trial.

When Collector to pass judgment by default and when to decree upon admission.

Proviso.

If plaintiff only appear, Collector may proceed *ex-parte*.

Defendant appearing at postponed hearing may be heard in answer.

Reversal and alteration of decrees *ex-parte* or by default.

53. If it shall appear to the Collector that the arrest of the defendant was applied for without reasonable cause, the Collector may in his decree award to the defendant such sum not exceeding one hundred rupees as he may deem a reasonable compensation for any injury or loss which the defendant may have sustained by reason of such arrest or of his detention in jail during the pendency of the suit.

54. If on the day fixed by the summons or proclamation for the appearance of the defendant, or on any subsequent day to which the hearing of the case may be adjourned prior to the recording of an issue for trial as hereinafter provided, neither of the parties appear in person or by an agent, the case shall be struck off with liberty to the plaintiff to bring a fresh suit unless precluded by the rules for the limitation of actions.

55. If on any such day the defendant only appear, the Collector shall pass judgment against the plaintiff by default, unless the defendant admit the cause of action, in which case the Collector shall proceed to give judgment for the plaintiff upon such admission without costs :

Provided that such judgment, if there be more than one defendant, shall be only against the defendant who makes the admission.

56. If on any such day the plaintiff only appear, the Collector, upon proof that the summons or proclamation has been duly served according to the provisions of this Act, shall proceed to examine the plaintiff or his agents, and, after considering the allegations of the plaintiff, and any documentary or oral evidence adduced by him, may either dismiss the case or postpone the hearing of it to a future day for the attendance of any witness the plaintiff may wish to call, or may pass judgment *ex-parte* against the defendant.

57. If the defendant shall appear on any subsequent day to which the hearing of the suit may be postponed under the last preceding section, the Collector may upon such conditions, if any, as to costs or otherwise as he may think proper, allow the defendant to be heard in answer to the suit as if he had appeared on the day fixed for his attendance.

58. No appeal shall lie from a judgment passed *ex-parte* against a defendant who has not appeared, or from a judgment against a plaintiff by default for non-appearance.

But in all such cases, if the party against whom judgment has been given shall appear, either in person or by agent, if a plaintiff within fifteen days from the date of the Collector's order, and if a defendant within fifteen days after any process for enforcing the judgment has been executed or at any earlier

of 1859.]

(Sections 59—63.)

period, and shall show good and sufficient cause for his previous non-appearance and shall satisfy the Collector that there has been a failure of justice, the Collector may, upon such terms and conditions as to costs or otherwise as he may think proper, revive the suit and alter or rescind the decree, according to the justice of the case.

But no decree shall be reversed or altered without previously summoning the adverse party to appear and be heard in support of it.

59. When both parties appear in person or by agent on the day named in the summons, or upon any subsequent day to which the hearing of the case may be adjourned for sufficient reason to be recorded by the Collector, the Collector shall proceed to examine such of the parties as may be present, and either party or his agent may cross-examine the other.

On appearance, parties to be examined by Collector and may cross-examine each other.

If either of the parties be not bound to attend personally, any agent by whom he shall appear, or any person who shall accompany such agent, shall be examined and cross-examined in like manner as the party himself would have been if he had attended personally.

At the time of examination the defendant, if he think fit, may file a written statement of his defence.

60. The examination of the parties or their agents or such other persons as aforesaid shall be upon oath or affirmation or otherwise according to the law for the time being in force relative to the examination of witnesses.

Examination of parties, etc.

The substance of the examination shall be reduced to writing in the vernacular language of the Collector and filed with the record.

61. If either of the parties shall bring forward a witness on such day, the Collector may take the evidence of such witness.

Witnesses to be examined.

62. If the defendant rely on any document in support of his defence, he shall deliver the same into Court at the first hearing of the suit, and unless such document be so delivered in, or its nonproduction be sufficiently excused, or unless the Collector see fit to extend the time for producing the same, it shall not afterwards be admitted.

Documentary evidence to be produced by defendant.

63. If after the examination required by section 59 and also the examination of any witness who may attend to give evidence on behalf of either of the parties, and after a consideration of the documentary evidence adduced a decree can be properly made without further evidence, the Collector shall make his decree accordingly.

After examination, Collector may make decree if no further evidence required.

(Sections 64—68.)

Consequence of inability of agent to answer.

64. If, on such examination as aforesaid, the agent of either party be unable to answer any material question relating to the case which the Collector is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Collector may postpone the hearing of the case to a future day, and direct that the party whose agent may have been unable to answer as aforesaid shall attend in person on such day; and, if the party so directed to attend shall fail to appear in person on the day appointed, the Collector may pass judgment as in case of default or make such other order as he may deem proper in the circumstances of the case.

If necessary, Collector to record issue, and to fix day for hearing further evidence.

65. If on such examination as aforesaid it appear that the parties are at issue on any question upon which it is necessary to hear further evidence, the Collector shall declare and record such issue, and shall fix a convenient day for the examination of witnesses and the trial of the suit; and the trial shall take place on that day unless there be sufficient reason for adjourning it, which reason shall be recorded by the Collector.

Parties to produce witnesses on day of trial, or Collector, on application, to summon witness.

66. The parties shall bring forward their witnesses on the day of trial, and, if either party require assistance to procure the attendance of a witness on such day either to give evidence or to produce a document, he shall apply to the Collector in sufficient time before the day fixed for the trial, to enable the witness to be summoned to attend on that day and the Collector shall issue a summons requiring such witness to attend.

Rules regarding attendance, examination, etc., of witnesses.

67. The provisions of the Regulations and Acts and all other rules for the time being in force relating to the evidence of witnesses, for procuring the attendance of witness and the production of documents, and for the examination, remuneration and punishment of witnesses, whether parties to the case or not, in cases before the Civil Courts of the Presidency of Bengal, shall, except so far as the same may be inconsistent with the provisions of this Act, apply to and be of equal force and effect in suits under this Act.

Consequence of parties not appearing on day fixed for trial of issue.

68. If on the day fixed for the trial on any issue neither of the parties appear, the case shall be struck off under the conditions provided in section 54.

If on any such day one only of the parties appear, the issue may be tried and determined in the absence of the other party upon such proof as may be then before the Court.

of 1859.]

(Sections 69—73.)

69. When suits under this Act are instituted or defended by *naibs*, *gumáshtas* or other persons employed in the collection of rent or management of land in the name and on the behalf of the landholders by whom they are so employed, all the provisions of this Act by which the personal appearance or attendance of parties to a suit is or may be required shall be applicable to such *naibs*, *gumashtas* or other persons; and anything which by this Act is required or permitted to be done by a party in person may be done by any such person as aforesaid.

Suits by and against *naibs*, *gumashtas*, etc.

Processes served on any such person shall be as effectual for all purposes in relation to the suit as if the same had been served on the landholder in person, and all the provisions of this Act relative to the service of processes on a party to the suit shall be applicable to the service of processes on such person.

70. A plaintiff or defendant shall not be required to attend in person if of the female sex and of a rank or class which according to the custom and manners of the country would render it improper for her to appear in public.

Personal attendance when not required.

71. Any party to a suit may employ an authorized agent or *mukhtar* to conduct the case on his behalf, but the appointment of such agent or *mukhtar* shall not excuse the personal attendance of the plaintiff or defendant in cases where his personal attendance is required by the summons or any order of the Court. ¹* * *

Employment of authorized agents or *mukhtars*.

72. The Collector may in any case grant time to the plaintiff or defendant to proceed in the prosecution or defence of a suit, and may also from time to time, in order to the production of further proof or for other sufficient reason to be recorded by the Collector, adjourn the hearing or further hearing of any case in such manner as to him may seem fit.

Collector may grant time to adjourn hearing.

73. The Collector may at any stage of a case cause a local inquiry and report respecting the matter in dispute to be made by any officer subordinate to him, or by any other officer of ²[the Government] with the consent of the authority to whom such officer is subordinate, or may himself proceed to the spot and make such local inquiry in person.

Collector may cause local inquiry to be made.

The provisions of the law for the time being in force relative to local inquiries by *amins* or commissioners under orders of the Civil Courts shall apply to any local inquiry made by any officer

¹The words "and no fee for any agent shall be charged as part of the costs of suit in any case under this Act" which were repealed by the Pleaders, Mukhtars and Revenue Agents Act, 1865 (XX of 1865), are omitted.

²The words "the Crown" were substituted for the word "Government" by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "Government" was subsequently substituted for the word "Crown" by paragraph 4 (1) of the Adaptation of Laws Order, 1950.

(Sections 74—77.)

under this section, and so far as they are applicable to inquiries made by the Collector in person.

In the latter case the Collector, after completing the inquiry, shall record on the proceedings such observations as appear to him appropriate, and the observations so recorded shall be received as evidence in the suit.

74. [*Payment of money into Court in satisfaction of demand.*]—Rep. by the Bengal Rent Act, 1862 (Ben. Act VI of 1862).

No
interest
on
deposits.

75. No interest shall be allowed to a plaintiff on any sum paid by the defendant into Court from the date of such payment, whether such sum be in full of the plaintiff's claim or fall short thereof.

Collector
when to
fix
term for
which
patta
is to be
granted.

76. If on the trial of a suit for the delivery of a *patta* instituted by a *raiyat* having a right of occupancy the parties do not agree as to the term for which the *patta* is to be granted, the Collector shall fix such term as under the circumstances of the case he may think just and proper :

Proviso.

Provided that the term shall not in any case be longer than ten years, and in estates not permanently settled shall not extend beyond the period for which the proprietor of the estate has engaged with ¹[the Government] :

Provided also that, if the defendant be a farmer or other person having only a temporary interest in the land, the term of the *patta* shall not extend beyond the period of the continuance of such interest.

For cultivators not having a right of occupancy, the term of *patta* shall be exclusively in the discretion of the person entitled to the rent of the land.

In suits
for
rent,
third
person
claiming
to be
made
party.

77. When, in any suit between a landholder and a *raiyat* or under-tenant under this Act, the right to receive the rent of the land or tenure cultivated or held by the *raiyat* or under-tenant is disputed, and such right is claimed by or on behalf of a third person on the ground that such third person or a person through whom he claims has actually and in good faith received and enjoyed such rent before and up to the time of the commencement of the suit, such third person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by such third person shall be inquired into and the suit shall be decided according to the result of such inquiry :

Proviso.

Provided always that the decision of the Collector shall not affect the right of either party, who may have a legal title to the

¹See foot-note 2 on page 359, *ante*.

of 1859.]

(Sections 78—82.)

rent of such land or tenure, to establish his title by suit in the Civil Court if instituted within one year from the date of the decision.

78. Any person desiring to eject a *raiyat* or to cancel a lease on account of non-payment of arrears of rent may sue for such ejectment or cancelment and for recovery of the arrear in the same action, or may adduce any unexecuted decree for arrears of rent as evidence of the existence of such arrear in a suit for such ejectment or cancelment.

Suits for ejectment or cancelment of lease.

In all cases of suits for the ejectment of a *raiyat* or the cancelment of a lease, the decree shall specify the amount of the arrear, and, if such amount together with interest and costs of suits be paid into Court within fifteen days from the date of decree, execution shall be stayed.

79. [Judgment how to be pronounced.]—Rep. by the Bengal Rent Act, 1862 (*Ben. Act VI of 1862.*)

80. When a decree is given for the delivery of a *patta*; if the person required by the decree to grant such *patta* refuse or delay to grant the same, the Collector may grant a *patta* in conformity with the terms of the decree under his own hand and seal, and such *patta* shall be of the same force and effect as if granted by the person aforesaid.

If person required by decree refuse to grant *patta*, Collector may do so.

81. When a decree is given for the delivery of a *kabuliyat*, if the person required by the decree to execute such *kabuliyat* shall refuse to execute the same, the decree shall be evidence of the amount of rent claimable from such person, and a copy of the decree under the hand and seal of the Collector shall be of the same force and effect as a *kabuliyat* executed by the said person.

Refusal to execute *kabuliyat* as required by decree.

82. If the decree be for the ejectment of any *raiyat* from land occupied by him, or for the reinstatement of any *raiyat* in the occupancy of land from which he has been ejected, the decree shall be executed by giving the possession or occupancy of the land to the person entitled by the decree to such possession or occupancy.

Mode of executing decree for ejectment or reinstatement of *raiyat*.

If any opposition is made to the execution of the order for giving such possession or occupancy by the party against whom the order is made, the Magistrate, on the application of the Collector, shall give effect to the same.

Punishment for obstructing execution.

(Sections 83—88.)

Execution of decree for cancelment of lease or ejectment or reinstatement of farmer or tenant.

83. If the decree be for the cancelment of any lease or the ejectment of any farmer or other person (not being an actual cultivator), or for the reinstatement of any farmer or other such person in the possession of a farm or tenure from which he has been ejected, the decree shall be executed by proclaiming the substance of the decree to the cultivators or other occupants by beat of drum or in such other manner as may be customary, and affixing the same in some conspicuous place within or adjacent to the farm or tenure.

When judgment-debtor may be detained or imprisoned without issue of process of execution.

84. If the decree be for arrears of rent or for money, papers or accounts, and the defendant have been committed to jail or appear pursuant to the conditions of any security-bond given under section 51, the Collector may order that he be detained in or committed to the civil jail, unless he immediately pay into Court the amount of the decree with costs, or otherwise comply with the terms of the decree.

Liability of surety on failure to deliver judgment-debtor into custody.

85. If the judgment-debtor have given security for his appearance and be not present when judgment is pronounced, and the surety shall fail to deliver him into custody when required so to do, process of execution may be taken out against the surety in the same manner as if a decree for the amount due by the debtor had been passed against the surety.

If the decree be for the delivery of papers or accounts, and the defendant be not present when judgment is pronounced and the surety shall fail to deliver him into custody when required so to do, execution may be taken out against the surety for the sum due under the bond in the same manner as if a decree for that sum had been passed against the surety.

86. [*Issue of process of execution.*—*Rep. by the Bengal Rent Act, 1862 (Ben. Act VI of 1862).*]

Application for execution against moveable property.

87. Any moveable property required to be seized under an execution shall, if practicable, be described in a list to be furnished by the judgment-creditor, but if the creditor is unable to furnish such list, he may apply for a general attachment of the debtor's effects to the amount of the judgment and costs.

In either case the property to be sized shall be pointed out to the officer entrusted with the execution of the process by the creditor or his agent.

Duration of warrant.

88. Every warrant of execution shall bear date on the day on which it is signed by the Collector and shall continue in force for such period as the Collector may direct, not being more than sixty days calculated from such date.

(Sections 89—93.)

89. Second and successive warrants of execution may be issued by order of the Collector on the application of the judgment creditor, after the expiration of the period fixed for the continuance in force of a previous warrant.

Second and successive warrants.

90. Process of execution shall not be issued upon any judgment without previous notice to the party against whom execution is applied for, if, when application for the process is made, a period of more than one year shall have elapsed from the date of the judgment or from the date of the last previous application for execution.

After one year execution not to issue without notice.

91. Execution on a judgment shall not issue against the heir or other representative of a deceased party without notice to such heir or other representative to appear and be heard.

Notice of execution against representative.

92. No process of execution of any description whatsoever shall be issued on a judgment under this Act after the lapse of three years from the date of such judgment, unless the judgment be for a sum exceeding five hundred rupees, in which case the period within which execution may be had shall be regulated by the general rules in force in respect to the period allowed for the execution of decrees of the Civil Courts.

Execution after three years from date of judgment.

93. If a warrant issue for taking in execution the body of any person, the officer charged with the execution of the warrant shall bring him with all convenient speed before the Collector.

Warrant against person.

If such person shall not then deposit in Court the full amount specified in the warrant or make such arrangement for the payment of the same as shall be satisfactory to the judgment-creditor, or satisfy the Collector that he has no present means of paying the debt, the Collector shall send him to the civil jail, there to remain for such time as shall be directed by a warrant addressed to the keeper of the jail, unless he shall in the meantime pay the full amount for the payment of which he is liable under the decree :

Provided that the time for which a debtor may be confined in execution of a decree under this Act shall not exceed three calendar months when the amount decreed exclusive of costs does not exceed fifty rupees, or six calendar months when such amount does not exceed five hundred rupees, or two years in any other case.

Limit of imprisonment.

If the decree against any person arrested under a warrant be for the delivery of papers or accounts and the papers or accounts shall not be delivered by him when he is brought before the Collector, such person may be committed to the civil jail, there to remain for such time not exceeding six calendar months as the Collector shall direct, unless he shall in the meantime deliver the papers or accounts according to the terms of the decree.

If arrest be for non-delivery of accounts.

(Sections 94—99.)

No
second
imprison-
ment
under
same
judgment.

94. Any person once discharged from jail shall not be imprisoned a second time under the same judgment.

If the amount due under the decree do not exceed one hundred rupees, the Collector may declare such discharged person absolved from further liability under that decree.

In other cases the discharge shall not extinguish the liability of the discharged person under the decree, or exempt any property belonging to such person from attachment in execution of the same.

Deposit
of diet-
money.

95. Any person applying for a warrant of arrest under section 49 or suing out process of execution against the body of any person, shall deposit in Court, at the time of issue of the warrant, diet-money for one month of thirty days at such rate as the Collector may direct, not exceeding two annas *per diem*, unless the Collector for any special reason direct that deposit be made at a higher rate, which shall not exceed four annas *per diem*.

Payment
of diet-
money
in
advance
during
imprison-
ment.

96. Payment of diet-money at the same rate shall be made previously to the commencement of each succeeding month of the imprisonment, in failure of which the party confined shall be discharged.

Diet-
money
to be
cost in
suit.

97. All-diet-money spent in providing subsistence for any prisoner shall be added to the costs in the suit, and any diet-money not so spent shall be returned to the person who deposited the same.

List of
property
taken in
execution
and
procla-
mation
of sale.

98. In executing a writ of execution against the moveable property of a debtor liable under this Act, the officer charged with the execution of the writ shall prepare a list of the property pointed out by the judgment-creditor, and shall publish a proclamation specifying the day upon which the sale is intended to be held, together with a copy of the said list, at the intended place of sale and at the residence of the debtor.

A copy of the said proclamation and list shall be transmitted to the Collector and shall be affixed in his office.

Custody
and
sale of
moveable
property
taken in
execution.

99. No sale of any moveable property taken in execution shall be made until after the end of ten days next following the day on which such property may have been so taken.

Until such sale the property shall be deposited in some fit place or it may remain in custody of some fit person approved by the officer executing the writ.

The provisions of sections 129 to 133, so far as the same are applicable, shall be applied to sales under this section,

of 1859.]

(Sections 100—105.)

100. If before the day fixed for the sale a third party appear before the Collector and claim a right or interest in any of the moveable property taken in execution, the Collector shall examine such party or his agent on oath or affirmation or otherwise, according to the law for the time being in force relative to the examination of witnesses, and if he see sufficient reason for so doing may stay the sale of such property.

Collector may stay sale of moveable property seized if third party claim interest therein.

101. The Collector shall adjudicate upon such claim and make such order between the claimant and the plaintiff and defendant in the original suit as shall seem fit.

Collector to adjudicate such claims.

In trying such claim the Collector shall be guided by the rules contained in this Act so far as they may be applicable.

102. If the claimant shall fail to establish his right to the property taken in execution, the Collector at the time of disposing of the case may award to the judgment-creditor against such claimant as part of the costs such sum as he may consider sufficient to cover any loss of interest or damage which the judgment-creditor may have sustained by reason of the postponement of the sale of the property.

Claimant failing to establish right liable to compensate judgment-creditor.

103. No appeal shall lie from any order passed by the Collector under the two last preceding sections. But the party against whom the same may be given shall be at liberty to bring a suit in the Civil Court to establish his right at any time within one year from the date of the order :

No appeal from order under sections 101, 102. Proviso.

Provided that, if the order be for the sale of the property, the suit shall not be for the recovery of the property, but shall be for damages against the judgment-creditor by whom the property was brought to sale,

104. No irregularity in publishing or conducting a sale of moveable property under an execution shall vitiate such sale, but this rule shall not be held to deprive any person who may sustain damage by reason of such irregularity from recovering such damage by action in the Civil Court :

Sale not vitiated by irregularity in publishing or conducting.

Provided such action be brought within one year from the date of sale.

Proviso.

105. If the decree be for an arrear of rent due in respect of an under-tenure, which by the title-deeds or the custom of the country is transferable by sale, the judgment-creditor may make application for the sale of the tenure and the tenure may thereupon be brought to sale in execution of the decree according to the rules for the sale of under-tenures for the recovery of arrears of rent due in respect thereof contained in any law for the time being in force,

Sale of transferable tenures in execution of decrees for arrears of rent.

(Sections 106—108.)

But no such application shall be received when a warrant of execution has been previously issued against the person or moveable property of the judgment-debtor so long as such warrant remains in force.

If after sale of an under-tenure any portion of the amount decreed remains due, process may be applied for against any other property, moveable or immoveable, belonging to the debtor, and any such immoveable property may be brought to sale in the manner provided in section 110 of this Act.

If third party claim to be lawful possessor of tenure, Collector to stay sale and to inquire and adjudicate.

106. If before the day fixed for the sale of any such under-tenure as aforesaid in execution of a decree for arrears of rent due in respect of such under-tenure, a third party appear before the Collector and allege that such third party and not the person against whom the decree has been obtained is the proprietor of such under-tenure and was in lawful possession of the same at the time when such decree was obtained, the Collector shall examine such party in the manner provided in section 100 for the examination of third parties, and if he sees sufficient reason for so doing, and such party shall deposit in Court the amount of the decree or give sufficient security for the same, the Collector shall stay the sale and proceed to inquire into and adjudicate upon the claim :

Proviso.

Provided that no transfer of an under-tenure which by the provisions of this Act or any other law for the time being in force is required to be registered in the *sharishta* of the *zamindar* or superior tenant shall be recognised unless it have been so registered, or unless sufficient cause for non-registration be shown to the satisfaction of the Collector.

Mode of adjudicating claims.

107. In trying such claim the Collector shall be guided by the rules contained in this Act, so far as the same may be applicable, and the judgment passed by the Collector on such claim shall not be subject to appeal, but the party against whom it is given may bring a suit in the Civil Court to establish his right at any time within one year from the date of the judgment.

Execution of decrees given in favour of sharers in undivided estates or tenures.

108. If a decree is given in favour of a sharer in a joint undivided estate, dependent *taluk* or other similar tenure for money due to him on account of his share of the rent of an under-tenure situate in such undivided estate or *taluk* or tenure, application for the sale of such under-tenure shall not be received unless execution shall have been first taken out against any moveable property, which the judgment-debtor may possess within the district in which the suit was instituted and the sale of such property, if any, shall have proved insufficient to satisfy the judgment.

In such case such under-tenure, if of the nature described in section 105, may be brought to sale in execution of the decree in the same manner as any other immoveable property may be sold in execution of a decree for money under the provisions of the two next following sections.

of 1859.]

(Sections 109—112.)

109. In the execution of any decree for the payment of money under this Act not being money due as arrears of rent of a saleable under-tenure, if satisfaction of the judgment cannot be obtained by execution against the person or moveable property of the debtor within the district in which the suit was instituted, the judgment-creditor may apply for execution against any immoveable property belonging to such debtor.

If execution against immoveable property when money-decree cannot be otherwise satisfied.

110. If the immoveable property against which execution is applied for be a house or other building, process shall be issued in the same manner as for the attachment and sale of moveable property, and the provisions of sections 98 and 99 shall be applicable to the execution of such process.

Execution—against house or buildings ;

If the property be a saleable under-tenure, it shall be sold under the provisions of the law for the time being in force applicable to the sale of such under-tenures for demands other than those of arrears of rent due in respect thereof.

against saleable under-tenure ;

If the property be an estate or a share of an estate, it shall be sold under the rules in force for the sale of estate for the recovery of demands recoverable by the same process as arrears of land-revenue.

if in be an estate or a share of an estate.

111. If, before the day fixed for the sale of any immoveable property as aforesaid, objection shall be offered to the sale on the ground of such property not belonging to the judgment-debtor, and consequently not being liable to be sold in execution of a decree against him, the Collector shall examine the party making the objection in the manner prescribed in section 100 for the examination of third parties, and if satisfied that there is sufficient ground for so doing, shall stay the sale and proceed to inquire into and adjudicate upon the objection, in the same manner, and subject to the same right of suit by the party against whom judgment may be given, as is provided in section 107.

Consequence of objection offered before sale of immoveable property.

112. The produce of the land is held to be hypothecated for the rent payable in respect thereof ; and, when an arrear of rent as defined in section 20 of this Act is due from any cultivator of land, the *zamindar*, *lakhirajdar*, farmer, dependent *talukdar*, under-farmer or other person entitled to receive rent immediately from such cultivator, instead of bringing suit for the arrear as hereinbefore provided, may recover the same by distraint and sale of the produce of the land on account of which the arrear is due under the following rules :

Produce of land held hypothecated for rent. Arrears of rent recoverable by distraint under following rules.

(Sections 113—116.)

Cultivators who have given security exempt from distraint.
 Proviso.

Provided always that, when a cultivator has given security for the payment of his rent, the produce of the land for the rent of which security has been given shall not be liable to distraint :

Distraint when barred.

Provided also that no sharer in a joint estate, dependent *taluk* or other tenure in which a division of land has not been made amongst the sharers shall exercise the power of distraint, otherwise than through a manager authorised to collect the rents of the whole estate, *taluk* or tenure on behalf of all the sharers in the same.

113. Distraint shall not be made for any arrear which has been due for a longer period than one year, nor for the recovery of any sum in excess of the rent payable for the same land in the preceding year, unless a written engagement for the payment of such excess has been executed by the cultivator.

Power of distraint of managers under Court of Wards, etc.

114. The power of distraint vested by section 112 in *zamindars* and other persons entitled to receive rent from cultivators of land may be exercised by managers under the Court of Wards, *sarbarahkars* and *tahsildars* of estates held under *khas* management, and other persons lawfully entrusted with the charge of landed property ; and also by the *naibs*, *gumashtas* and other agents employed by any such persons as aforesaid in the collection of rent if expressly authorized by power-of-attorney in that behalf :

Proviso.

Provided that, if any illegal act is committed by any such *naib*, *gumashta* or other agent under colour of the exercise of the said power, the person employing such agent shall be liable, as well as the agent, for any damages accruing by reason of such act.

Standing crops and crops gathered but not stored liable to distraint.

115. Standing crops and other ungathered products of the earth, and crops or other products when reaped or gathered, and deposited in any threshing-floor or place for treading out grain or the like, whether in the field or within a homestead, may be distrained by persons invested with the powers of distraint under the provisions of this Act.

But no such crops or products other than the produce of the land in respect of which an arrear of rent is due or of land held under the same engagement, and no grain or other produce after it has been stored by the cultivator, and no other property whatsoever, shall be liable to distraint under this Act.

Defaulter to be served with written demand, etc., before or at time of distraint.

116. Before or at the time when distraint is made under this Act, the distrainer shall cause the defaulter to be served with a written demand for the amount of the arrear, together with an account exhibiting the grounds on which the demand is made.

The demand and account shall, if practicable, be served personally on the defaulter, or, if he abscond or conceal himself so that they cannot be so served, shall be affixed at his usual place of residence.

of 1859.]

(Sections 117—121.)

117. Unless the amount of the demand is immediately paid or tendered, the distrainer may distrain property as aforesaid of value proportionate to the amount of the arrear with costs of the distress, and shall prepare a list or description of the said property and deliver a copy of the same to the owner, or if he be absent affix it at his usual place of residence.

Distress proportionate to arrear. List of property served on owner.

118. Standing crops and other ungathered products may, notwithstanding the distraint, be reaped and gathered by the cultivator, and may be stored in such granaries or other places as are commonly used by him for the purpose.

Standing crops, etc., when attached to be reaped and stored by cultivator, or, if he neglect to do so, by distrainer.

If the cultivator neglect to do so, the distrainer shall cause the said crops or products to be reaped or gathered and in such case shall store the same either in such granaries or other places as aforesaid, or in some other convenient place in the neighbourhood.

In either case the distrained property shall be placed in the charge of some person appointed by the distrainer for the purpose.

Crops or products which from their nature do not admit of being stored may be sold before they are cut or gathered, under the rules hereinafter provided ; but in such case the distraint shall be made at least twenty days before the time when the crops or products or any part of the same would be fit for cutting or gathering.

119. If a distrainer shall be opposed or shall apprehend resistance, and shall desire to obtain the assistance of a public officer, he may apply to the Collector and the Collector may, if he thinks necessary, depute an officer to support the distrainer in making the distraint.

Distrainer may apply for aid to Collector in case of resistance.

120. When any person empowered to distrain property under section 112 or section 114 shall employ a servant or other person to make the distress, he shall give to such servant or person a written authority ¹ * * * for the same, and the distress shall be made in the name and on the responsibility of the person giving such authority.

Servants employed to distrain to be furnished with written authority.

121. If at any time after property has been distrained, and prior to the day fixed for its being put up to sale as hereinafter provided the owner of the property shall tender payment of the arrear demanded of him and of the expenses of the distress, the distrainer shall receive the same and shall forthwith withdraw the distress.

Distress withdrawn if defaulter tender payment of arrear and expenses prior to sale.

¹ The words "(which may be on plain paper)," which were repealed by the Court-fees Act, 1870 (VII of 1870), are omitted.

(Sections 122--125.)

Applica-
tion for
sale.

122. Within five days from the time of the storing of any distrained crops or products, or if the crops or products do not, from their nature, admit of being stored, within five days from the time of making the distress, the distrainer shall apply for sale of the same to the Civil Court *amin* or other officer authorized to sell property in satisfaction of decrees of the Civil Court within the circle in which the distrained property is situate, or to such other public officer as the ¹[State Government] shall appoint for the purpose.

Form of
applica-
cation.

123. The application shall be in writing and shall contain an inventory or description of the property distrained, the name of the defaulter and his place of residence, the amount due and the date of the distress, and the place in which the distrained property is deposited.

Deposit
of cost
of notice to
defaulter.

Together with the application, the distrainer shall deliver to the Civil Court *amin* or other officer the amount necessary for the service of a notice upon the defaulter as hereinafter provided:

Procedure
of
amin
on
receipt of
applica-
tion.

124. Immediately on receipt of the application the Civil Court *amin* or other officer shall transmit a copy of it to the Collector ; and shall serve a notice [which shall be in the form (G) contained in the schedule to this Act or to the like effect] on the person whose property has been distrained, requiring him either to pay the amount demanded, or to institute a suit to contest the demand before the Collector within the period of fifteen days from the receipt of the notice.

He shall at the same time send to the Collector, for the purpose of being put up in his office, a proclamation fixing a day for the sale of the distrained property, which shall not be less than twenty days from the date of the application ; and shall deliver a copy of the proclamation to the peon charged with the service of the notice to be put up by him in the place where the distrained property is deposited.

The proclamation shall contain a description of the property, the demand for which it is to be sold and the place where the sale is to be held.

Amin
to
suspend
sale on
receipt
of
Collector's
certificate
of
insti-
tution
of suit.

125. If a suit shall be instituted before the Collector in pursuance of the aforesaid notice, the Collector shall transmit to the Civil Court *amin* or other officer, or if so requested shall deliver to the owner of the distrained property a certificate of the institution of such suit ; and on such certificate being received by or presented to the *amin* or other officer, he shall suspend proceedings in regard to the sale of the distrained property.

¹The words "Provincial Government" were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was subsequently substituted for the word "Provincial" by paragraph 4 (1) of the Adaptation of Laws Order, 1950.

of 1859.]

(Sections 126—129.)

126. A person whose property has been distrained in the manner hereinbefore provided may institute a suit to contest the demand of the distrainer immediately after the distraint of his property, and before the issue of notice of sale.

Suit to contest distrainer's demand before notice of sale.

When such suit is instituted, the Collector shall proceed in the manner prescribed in the last preceding section.

If thereafter application for the sale of the property is made to the Civil Court *amin* or other officer, he shall transmit a copy of the application to the Collector and suspend further proceedings pending the decision of the case.

127. The person whose property has been distrained may, at the time of instituting any such suit as aforesaid or at any subsequent period, execute a bond with security binding himself to pay whatever sum may be adjudged to be due from him with interest and costs of suit, and when such bond is executed the Collector shall give to the owner of the property a certificate to that effect, or if so requested shall serve the distrainer with notice of the same and, upon such certificate being presented to the distrainer by the owner of the property or served on him by order of the Collector, the property shall be released from distraint.

Distress withdrawn on receipt of Collector's certificate of execution of bond to pay amount due.

128. On the expiration of the period fixed in the proclamation of sale, if the institution of a suit to contest the demand of the distrainer has not been certified to the Civil Court *amin* or other officer in the manner hereinbefore provided, he shall, unless the said demand, with such costs of the distress as shall be allowed by him, be discharged in full, proceed to sell the property or such part of it as may be necessary in the manner following.

On expiration of period fixed in proclamation of sale if institution of suit to contest demand not certified, sale may proceed.

129. The sale shall be held at the place where the distrained property is deposited, or at the nearest *ganj*, *bazar*, *hath* or other place of public resort, if the Civil Court *amin* or other officer should be of opinion that it is likely to sell there to better advantage.

Place and manner of sale of distrained property.

The property shall be sold by public auction in one or more lots as the officer holding the sale may think advisable; and, if the demand with the costs of distress and sale be satisfied by the sale of a portion of the property, the distress shall be immediately withdrawn with respect to the remainder.

(Sections 130—134.)

If fair price not offered, sale may be postponed, and shall be then completed whatever price offered.

Payment of purchase-money.

Disposal of proceeds of sale.

Officers holding sales prohibited from purchasing. Irregularities to be reported to Collector. Officer not to sell, if he find that defaulter has not received notice.

130. If on the property being put up for sale a fair price in the estimation of the officer holding the sale be not offered for it, and the owner of the property or some person authorized to act on his behalf apply to have the sale postponed until the next day, or the next market-day if a market be held at the place of sale, the sale shall be postponed until such day and shall be then completed at whatever price may be offered for the property.

131. The price of every lot shall be paid for in ready money at the time of sale or as soon after as the officer holding the sale shall think necessary ; and in default of such payment the property shall be put again and sold.

When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and price paid.

132. From the proceeds of the sale of distrained property the officer holding the sale shall make a deduction at the rate of one anna in the rupee on account of the costs of the sale, and shall transmit the amount to the Collector in order that it may be credited to ¹[the State Government].

He shall then pay to the distrainer the expenses incurred by the distrainer on account of the distress and of the issue of the notice and proclamation of sale prescribed in section 124 to such amount as, after examination of the statement of expenses furnished by the distrainer, he shall think proper to allow.

The remainder shall be applied to the discharge of the arrear for which the distraint was made, with interest thereon up to the day of sale, and if there be any overplus, it shall be delivered to the person whose property shall have been sold.

133. Officers holding sales of property under this Act and all persons employed by or subordinate to such officers are prohibited from purchasing either directly or indirectly any property sold by such officers.

134. Civil Court *amins* and other officers as aforesaid are required to bring to the notice of Collectors any material irregularities committed by distrainers under colour of this Act ; and if in any case, on proceeding to hold a sale of property, the Civil Court *amin* or other officer shall find that the owner of the property has not received due notice of the distress and intended sale, he shall postpone the sale and report the case to the Collector, and the Collector shall direct the issue of another notice and proclamation of sale under section 124 or pass such other order as he may think proper.

¹The words "the Provincial Government" were substituted for the word "Government" by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was subsequently substituted for the word "Provincial" by paragraph 4 (1) of the Adaptation of Laws Order, 1950.

of 1859.]

(Sections 135—138.)

135. When a Civil Court *amin* or other officer has proceeded to any place for the purpose of holding a sale and no sale takes place either for the reason stated in the last preceding section or because the demand of the distrainer has been previously satisfied, no intimation of such satisfaction having been given by the distrainer to the Civil Court *amin* or other officer, the charge of one anna in the rupee on account of expenses shall be leviable and shall be calculated on the estimated value of the distrained property.

Recovery of expenses if *amin* proceeds to place of sale and no sale takes place.

If the demand of the distrainer be not satisfied until the day fixed for the sale, the charge for expenses shall be paid by the owner of the property and may be recovered by the sale of such portion thereof as may be necessary.

In every other case it shall be paid by the distrainer and may be recovered by attachment and sale of the property of the distrainer under the warrant of the Collector :

Provided always that in no case shall a larger amount than ten rupees be recoverable under this section.

136. All proceedings under this Act of the Civil Court *amins* and other officers as aforesaid shall be subject to the revision and orders of the Collectors and the Collectors with the sanction of the '[Board] of Revenue, may require the submission of such periodical reports and statements of business performed by the Civil Court *amins* and other officers as may be thought necessary.

Proceedings of *amins*, etc., subject to revision and orders of Collectors.

137. When a suit has been instituted to contest the demand of a distrainer and the property has not been released on security, if the demand or any portion of it shall be adjudged to be due, the Collector shall issue an order to the Civil Court *amin* or other officer authorizing the sale of the property, and on the application of the distrainer, which shall be made within five days from the receipt of such order by the Civil Court *amin* or other officer, such *amin* or officer shall publish a second proclamation in the manner prescribed in section 124, fixing another day for the sale of the distrained property, which shall not be less than five nor more than ten days from the date of the proclamation ; and, unless the amount adjudged to be due with the cost of distress be paid intermediately, shall proceed to sell the property in the manner hereinbefore provided.

Second proclamation of sale.

138. In all suits instituted to contest the demand of a distrainer, the distrainers shall be required to prove the arrear in the same manner as if he had himself brought suit for the amount under the foregoing provisions of this Act.

Procedure after institution of suit to contest demand.

If the demand or any part thereof is found to be due, the Collector shall make a decree for the amount in favour of the distrainer, and the amount may be recovered by sale of the property as provided in the last preceding section if the distress has not been withdrawn, and, if any balance remain due after

¹This word was substituted for the word "Boards" by the Amending Act, 1903 (I of 1903).

(Sections 139, 140.)

such sale, by execution of the decree against the person and any other property of the defaulter, or, if the property have been released on security, by execution of the decree against the person and property of the defaulter and of his surety.

If, on the other hand, the distraint is adjudged to be vexatious or groundless, the Collector, besides directing the release of the distrained property, may award such damages in favour of the plaintiff as the circumstances of the case shall seem to require.

Owner of property distrained for arrears alleged to be due from another may institute suit against distrainer, etc.

139. If any person shall claim, as his own, property which has been distrained for arrears of rent alleged to be due from any other person, such person may institute a suit against the distrainer and such other person to try the right to the property in the same manner and under the same conditions as to the time of instituting the suit and to the consequent postponement of sale, as a person whose property has been distrained for an arrear of rent alleged to be due from him may institute a suit to contest the demand.

When any such suit is instituted, the property may be released upon security being given for the value of the same.

If the claim is dismissed, the Collector shall make an order for the sale of the property or the recovery of the value thereof, as the case may be, for the benefit of the distrainer.

If the claim is upheld, the Collector shall decree the release of the distrained property with costs, and such damages (if any) as the circumstances of the case may seem to require :

Proviso.

Provided always that no claim to any produce of land liable to distraint under this Act, which at the time of the distress may have been found in the possession of a defaulting cultivator, whether such claim be in respect of a previous sale, mortgage or otherwise, shall bar the prior claim of the person entitled to the rent of the land, nor shall any attachment in execution of a judgment of any Civil Court prevail against such prior claim.

Procedure if right to distrain be disputed.

140. If, in any case in which property has been distrained for an arrear of rent and a suit has been instituted to contest the demand, the right to distrain for such arrear is claimed by or on behalf of any person other than the distrainer on the ground of such other person being actually and in good faith in the receipt and enjoyment of the rent of the land, such other person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by such other person before and up to the time of the commencement of the suit shall be inquired into, and the suit shall be decided according to the result of such inquiry :

Provided always that the decision of the Collector shall not affect the right of either party who may have a legal title to the rent of the land to establish his title by suit in the Civil Court if instituted within one year from the date of the decision.

of 1859.]

(Sections 141—145.)

141. If any person whose property has been distrained for the recovery of a demand not justly due, or of a demand due or alleged to be due from some other person, is prevented by any sufficient cause from bringing suit to contest the demand, or to try the right to the property, as the case may be, within the period allowed by sections 124 and 139, and his property is in consequence brought to sale, he may nevertheless institute a suit under this Act to recover damages for the illegal distress and sale of his property.

Persons prevented from suing in time to save property from sale may sue for damages.

142. If any person empowered to distrain property, or employed for the purpose under a written authority by a person so empowered, shall distrain or sell, or cause to be sold, any property for the recovery of an arrear of rent alleged to be due, otherwise than according to the provisions of this Act, or if any distrained property shall be lost, damaged or destroyed by reason of the distrainer not having taken proper precaution for the due keeping and preservation thereof or if the distraint shall not be immediately withdrawn when it is required to be withdrawn by any provision of this Act, the owner of the property may institute a suit under this Act, to recover damages for any injury which he may have thereby sustained.

Also persons aggrieved by illegal act of distrainer.

143. If any person not empowered to distrain property under sections 112 and 114 of this Act, nor employed for the purpose under a written authority by a person so empowered, shall distrain or sell or cause to be sold any property under colour of this Act, the owner of the property may institute a suit under this Act to recover damages from such person for any injury which he may have sustained from the distraint or sale.

Unlawful distraint.

The said person shall be held to have committed criminal trespass, and shall be subject to the penalties for that offence in addition to any damages which may be awarded against him in such suit :

144. Provided always that any suit which may be instituted under any of the last three sections shall be commenced within three months from the date of the occurrence of the cause of action.

Time for commencing suits for damages.

145. If any person shall resist a distraint of property duly made under this Act or shall forcibly or clandestinely remove any distrained property, the Collector, upon complaint being made within fifteen days from the date of such resistance or removal, shall cause the person accused to be arrested, and, if the offence be proved and the offender be the owner of the property, shall order him to be imprisoned in the civil jail for six months, or until the whole arrear due to the distrainer with all expenses and costs shall sooner be paid or levied by distress and sale of the property of the offender under warrant of the Collector.

Resistance of distraint.

(Sections 146—151:)

If the person convicted of the offence be any other than the owner of the property, he shall make good to the distrainer the value of the same, and shall further be liable to a fine not exceeding one hundred rupees, or, in default of payment thereof, to imprisonment for a period not exceeding two months.

Service of
process.

146. Every process issued by a Collector under this Act shall be under the seal and signature of the Collector, and shall be served or executed by the *nazir* or by such other officer as the Collector may direct at the cost of the party at whose instance it issued.

The amount of such cost, and, in the case of summons to a witness, any sum required for the travelling expenses of such witness, shall be deposited in Court before the process is issued :

Provided that, if in any case the Collector is satisfied that a party is unable to pay the cost of any necessary process, he may direct such process to be served free of charge.

Resistance
of
process.

147. Any resistance or opposition to the lawful process of a Collector under this Act may be punished by the Collector according to the provisions of the law for the time being in force for the punishment of resistance or opposition to the processes of the Courts of civil justice.

When in any such case the offender is not present in Court, the Collector may summon him to answer to the charge, and, if after due service of the summons he fail to attend, may issue a warrant for his apprehension.

Orders passed by Collectors under this section shall not be deemed to be orders relating to the trial of suits or to the execution of decrees within the meaning of section 151.

Place of
holding
Court.

148. It shall be competent to the Collector to hold a Court for hearing and determining suits under this Act in any place within the limits of his district or local jurisdiction :

Proviso.

Provided that every hearing and decision shall be in open Court, and that the parties to the suit or their authorized agents shall have had due notice to attend at such place.

149. [*Agents or mukhtars.*—*Rep. by the Pleaders, Mukhtars and Revenue Agents Act, 1865 (XX of 1865).*

150. [*Powers of Deputy Collectors.*—*Rep. by the Bengal Rent Act, 1862 (Ben. Act VI of 1862).*

Control of
Collectors
and
Deputy
Collectors.

151. In the performance of their duties under this Act, the Collectors and Deputy Collectors shall be subject to the general direction and control of the Commissioners and the ¹[Board] of Revenue ; and the Deputy Collectors shall be subject to the direction and control of the Collectors to whom they are subordinate.

¹This word was substituted for the word "Boards" by the Amending Act, 1903 (I of 1903).

of 1859.]

(Sections 152—156.)

All orders passed by a Collector under this Act, not being judgment in suits or orders passed in the course of suits and relating to the trial thereof or orders passed after decree and relating to the execution thereof, shall be appealable to the Commissioner; and all such orders passed by a Deputy Collector shall be appealable to the Collector; but no judgment of a Collector or Deputy Collector in any suit, and no order of a Collector or Deputy Collector passed in any suit and relating to the trial thereof, or after decree and relating to the execution thereof, shall be open to revision or appeal otherwise than as expressly provided in this Act.

No appeal from orders of Collectors and Deputy Collectors in certain cases.

152. Every appeal against the order of Collector shall be presented to the Commissioner within thirty days, and every appeal against the order of a Deputy Collector shall be presented to the Collector within fifteen days from the date of the order.

Time for presenting appeals from orders.

Orders passed in appeal by a Commissioner or a Collector shall not be open to any further appeal, but the Board of Revenue or the Commissioner may call for any case and pass such orders thereon as they may think proper.

153. In suits under clauses (2), (4) and (7) of section 23 and under section 24 of this Act tried and decided by a Collector, if the amount sued for or the value of the property claimed does not exceed one hundred rupees, the judgment of the Collector shall be final and not open to revision or appeal except as hereinafter provided, unless in any such suit a question of right to enhance or otherwise vary the rent of a *raiyyat* or tenant, or any question relating to a title to land, or to some interest in land as between parties having conflicting claims thereto, has been determined by the judgment, in which case the judgment shall be open to appeal in the manner provided in sections 160 and 161 of this Act.

When appeal allowed from judgment of Collector for money below one hundred rupees.

154. In suits in which the judgment of the Collector is final as provided in the last preceding section, the Collector may, upon the application of either party, if preferred within thirty days from the date of the decision, order the re-hearing of a suit, upon the ground of the discovery of new evidence or matter material to the issue of the case which the applicant had no knowledge of or could not produce, at the time of trial.

Re-hearing in suits not open to appeal.

155. When any such suit as aforesaid, in which if tried and decided by a Collector the judgment of the Collector would be final, is tried and decided by a Deputy Collector, an appeal from the judgment of the Deputy Collector shall lie to the Collector.

Appeal from decision of Deputy Collector.

156. The petition of appeal shall be written * * * and shall be presented to the Collector within fifteen days from the date of the decree, provided that such time as may be requisite for procuring a copy of the decree appealed against shall not be reckoned as part of the fifteen days.

Petition of appeal.

¹So much of sec. 156 as relates to the stamp to be borne by a petition of appeal having been repealed by the Court-fees Act, 1870 (VII of 1870), the words "on stamp paper of eight annas value" have here been omitted.

(Sections 157—162.)

**Procedure
in appeal.**

157. The Collector shall fix a day for hearing the appeal, and shall cause notice of the same to be served on the respondent in the manner hereinbefore prescribed for the service of summons.

If, on the day fixed for hearing the appeal or any other day to which the hearing may be adjourned, the appellant shall not appear in person or by an agent, the appeal shall be dismissed for default.

If the appellant shall appear and the respondent shall not appear in person or by an agent the appeal shall be heard *ex parte*.

**Re-admis-
sion of
appeal.**

158. If an appeal be dismissed for default of prosecution, the appellant may, within fifteen days from the date of the dismissal, apply to the Collector for the re-admission of the appeal, and, if it shall be proved to the satisfaction of the Collector that the appellant was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the Collector may re-admit the appeal.

**Judgment
in appeal.**

159. After hearing the appeal the Collector shall give judgment in the manner hereinbefore prescribed for giving judgment in original suits, and the judgment of the Collector shall be final.

**In what
suits
appeal to
lie to Zila
Judge ;**

160. In all suits other than those, in which, when tried and decided by a Collector, the judgment of the Collector is declared to be final, or when tried and decided by a Deputy Collector an appeal is allowed to the Collector, an appeal from the judgment of the Collector or Deputy Collector shall lie to the Zila Judge ; unless the amount or value in dispute exceed five thousand rupees, in which case the appeal shall lie to the Sadar Court.

**to sadar
Court.****Presen-
tation and
hearing of
appeals.**

161. The petition of appeal shall be written ¹* * * and the rules in force in regard to the time within which appeals from the decisions of such Courts may be received, and to the manner in which such appeals are heard and determined, and to all proceedings which may be had in respect of such appeals, shall be applicable to appeals to the Zila Judge or Sadar Court under this Act.

162. [Revenue-offices in which suits to be preferred.]—Rep. by the Bengal Rent Act, 1862 (Ben. Act VI of 1862),

¹ So much of sec. 161 as relates to the stamp to be borne by a petition of appeal having been repealed by the Court-fees Act, 1870 (VII of 1870), the words "on the stamp paper prescribed for appeals from the subordinate Civil Courts with reference to the amount or value of the property involved in the appeal" have here been omitted.

of 1859.]

(Sections 163, 168.)

163. 1* * * * no Collector shall exercise any jurisdiction under this Act in respect to any lands situate beyond the limits of the district to which he is appointed, by reason of such lands forming part of an estate, the revenue of which is paid into the treasury of the said district.

No jurisdiction in Collector as to lands beyond district.

164. No Deputy Collector appointed under Regulation IX, 1833², of the ³[West Bengal] Code shall exercise any judicial powers or other jurisdiction under this Act if entrusted with any police functions.

Deputy Collector when not to exercise judicial powers.

165. Assistants to Collectors shall not exercise any powers under this Act unless invested by ⁴[the State Government] with the powers of Deputy Collectors, in which case they may exercise the powers hereby assigned to Deputy Collectors.

Powers to be exercised by Assistants to Collectors.

166. Nothing contained in this Act shall be held to affect the right, vested in proprietors of land under direct engagements with ⁵[the Government], of bringing to sale for arrears of rent *patni taluks* and other similar tenures under the provisions of Regulation VIII, 1819⁶.

Saving of rights of proprietors as to tenures under Reg. VIII, 1819.

167. [Commencement of Act.]—Rep. by the Repealing Act, 1870 (XIV of 1870).

168. The words “civil jail” as used in this Act shall include the civil jail of the *zila* and any place appointed by the ⁷[State] Government for the confinement of prisoners by any Court constituted under this Act :

“Civil jail”.

The word “*Nazir*” shall include any officer of a Court authorized to serve or execute its process :

“*Nazir*”

8*

¹The words “Except as provided in the last preceding section,” which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

²The Bengal Land-revenue (Settlement and Deputy Collectors) Regulation, 1833.

³See foot-note 2 on page 344, ante.

⁴See foot-note 1 on page 372, ante.

⁵The words “the Crown” were substituted for the word “Government” by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word “Government” was subsequently substituted for the word “Crown” by paragraph 4(l) of the Adaptation of Laws Order, 1950.

⁶The Bengal Patni Taluks Regulation, 1819.

⁷The word “Provincial” was substituted for the word “Executive” by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word “State” was subsequently substituted for the word “Provincial” by paragraph 4(l) of the Adaptation of Laws Order, 1950.

⁸The clause in sec. 168 as to number and gender, which was repealed by the Amending Act, 1903 (I of 1903), is omitted.

[Act X]

(Schedule.—Forms A and B.)

SCHEDULE.**FORM A.**

(See section 44.)

FORM OF SUMMONS TO DEFENDANT.

No. (of suit) dated

In the Court of

A. B., Plaintiff.

(Name, description and address of plaintiff.)

C. D., Defendant.

(Name, description and address of defendant.)

Whereas the said A. B. has brought a claim against you in this Court for (*here specify particulars of claim as given in the statement*), you are hereby required to appear in person in this Court on the day of (*if not specially required to appear in person, statè, "in person or by an agent who has personal knowledge of the subject or who shall be accompanied by a person who has such knowledge"*) to answer the above-named plaintiff, and you will bring with you (*or send by your agent*) (*here mention any document the production of which may be required by the plaintiff*) which the plaintiff desires to inspect, and all documents on which you may intend to rely in support of your defence. You will also bring with you your witnesses, if they are willing to attend without issue of process.

FORM B.

(See section 49.)

FORM OF WARRANT OF ARREST.

No. (of suit) dated

In the Court of

A. B., Plaintiff.

C. D., Defendant.

To the Nazir of the Court of the Collector of

Whereas the plaintiff in this suit has obtained an order from the Court for the arrest of the defendant, you are hereby commanded to bring the defendant before the Court on or before the day of to be dealt with according to law.

Dated this day of 18 .

of 1859.]

(Schedule.—Forms C to E.)

FORM C.

(See section 49.)

FORM OF NOTICE TO ACCOMPANY SUCH WARRANT.

In the Court of

A. B., Plaintiff.

(Name, description and address of plaintiff.)

C. D., Defendant.

(Name, description and address of defendant.)

Whereas the said A. B. has brought a claim against you in this Court for (*here specify particulars of claim as given in the statement*) and has obtained a warrant for your arrest, you are hereby required, unless you admit the claim, to bring with you to the Court all documents on which you may intend to rely in support of your defence.

FORM D.

(See section 51.)

FORM OF SECURITY-BOND FOR APPEARANCE OF DEFENDANT.

Whereas A. B., plaintiff, has instituted a suit in the Court of the Collector of against C. D., defendant, and the said C. D. has been required to give security for his appearance at any time when called on while the suit is depending and until execution of the decree, I, E. F., hereby declare myself for the said C. D.'s appearance as aforesaid, and, in case of his making default in such appearance, I engage to pay any sum for the payment of which the said C. D. may be liable under the decree. (*If the suit be for the delivery of papers or accounts specify some sum to be fixed by the Collector.*)

FORM E.

(See section 86.)

WRIT OF EXECUTION AGAINST THE PERSON.

Rep. by the Amending Act, 1891 (XII of 1891).

(Schedule. — Forms F and G.)

FORM F.

(See section 86.)

WRIT OF EXECUTION AGAINST THE EFFECTS.

Rep. by the Amending Act, 1891 (XII of 1891).

FORM G.

(See section 124.)

FORM OF NOTICE TO OWNER OF DISTRAINED PROPERTY.

Office of Commissioner for sale of distrained property.

A. B., Distrainer.

(Name, description and address of the owner of the property.)

Whereas the said A. B. has applied to have the distrained property specified below sold for the recovery of alleged to be due to him as arrears of rent, you are hereby required either to pay the said sum to the said A. B., or to institute a suit before the Collector to contest the demand within fifteen days from the receipt of his notice, failing which the property will be sold.

Dated this

day of

18

Act XI of 1859
(The Bengal Land-revenue Sales Act, 1859.)

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Act XI of 1859

(The Bengal Land-revenue Sales Act, 1859.)¹

SUPPLEMENTED	{ Ben. Act III of 1862. Ben. Act VII of 1868. Ben. Act I of 1895. Ben. Act III of 1913.
SHORT TITLE GIVEN	...	...	...	Act I of 1903.
REPEALED IN PART	...	...	...	{ Act XIV of 1870. Act XII of 1891. Ben. Act II of 1862. Ben. Act III of 1881. West Ben. Act VII of 1950.
AMENDED	...	...	...	{ Ben. Act I of 1939. Ben. Act VII of 1942. Ben. Act II of 1943.
REPEALED IN PART AND AMENDED	...	...	...	{ Act I of 1903. Act IV of 1914. Ben. Act VII of 1868.
ADAPTED	...	...	...	{ (a) The Government of India (Adaptation of Indian Laws) Order, 1937. (b) The Adaptation of Laws Order, 1950.

(4th May, 1859.)

An Act to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency.

[Whereas it is expedient to discontinue the practice of obtaining the previous sanction of the Board of Revenue to sales of estates for arrears of revenue, or other demands of Government, in the Province of Cuttack ;]

Preamble.

and whereas it is just that a person having a lien upon an estate, and paying the money necessary to protect it from sale for arrears of revenue, should be reasonably secured ;

and whereas it is expedient to afford shares in estates, who duly pay their shares of the *sadar jama* of their estates, easy means of protecting their shares from sale by reason of the default of their co-sharers ;

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LOCAL EXTENT.—This Act was passed for the whole of the former Province of Bengal—see the title and the concluding paragraph of sec. 1, but was declared by sec. 62 to extend only to such parts of that Province as are subject to the general Regulations.

It has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), sec. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), sec 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

It has been extended, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), sec 5, to the following Scheduled Districts, namely :—

the Western Duars, in the Jalpaiguri district ; and

the Darjeeling district.

(Sections 1—4.)

and whereas it is expedient to afford landholders, particularly absentees, facilities in guarding against the accidental sale of their estates for arrears of revenue by reason of the neglect or fraud of their agents ;

and it is therefore proper, for the above and other purposes, to improve the law relating to sales of land for arrears of revenue in the Provinces of Bengal, [*Bihar and Orissa* ;]

It is enacted as follows :

1. [*Laws repealed.*—*Rep. by the Repealing Act, 1870 (XIV of 1870).*]

“Arrear of
revenue”
defined.

2. If the whole or a portion of a *kist* or instalment of any month of the era according to which the settlement and *kist-bandi* of any *mahal* have been regulated be unpaid on the first of the following month of such era, the sum so remaining unpaid shall be considered an arrear of revenue.

Latest day
of
payment.

3. Upon the promulgation of this Act the Board of Revenue at Calcutta shall determine upon what dates all arrears of revenue and all demands which, by the Regulations and Acts in force, are directed to be realised in the same manner as arrears of revenue, shall be paid up in each district under their jurisdiction, in default of which payment the estates in arrear in those districts, except as hereinafter provided, shall be sold at public auction to the highest bidder.

And the said Board shall give notice of the dates so fixed in the *Official Gazette*, and shall direct corresponding publication to be made, as far as regards each district in the language of that district, in the office of the Collector or other officer duly authorized to hold sales under this Act, in the Courts of the Judge, Magistrate (or Joint Magistrate, as the case may be), and *Munsifs*, and at every *thana*-station of that district ;

and the dates so fixed shall not be changed except by the said Board by advertisement and notification in the manner above described, to be issued at least three months before the close of the official year preceding that in which the new date is, or dates are, to take effect.

4. [*In Sylhet, personal property of defaulters may in the first instance be distrained and sold.*—*Rep. by the Amending Act, 1891 (XII of 1891).*]

¹ The preamble beginning with “and whereas it is expedient to provide for the voluntary registration of dependent *taluks*” and ending with “held at rents sufficient for the security of the revenue ;” were omitted by sec 3 of the Bengal Land-revenue Sales (West Bengal Amendment) Act, 1950 (West Ben. Act VII of 1950).

of 1859.]

(Sections 5, 6.)

5. Provided always that no estate, and no share or interest in any estate, shall be sold for the recovery of arrears or demands of the descriptions mentioned below, otherwise than after a notification, in the language of the district, specifying the nature and amount of the arrear or demand, and the latest date on which payment thereof shall be received, shall have been affixed, for a period of not less than fifteen clear days preceding the date fixed for payment according to section 3 of this Act,

Proviso
as to
certain
description
of arrears.

in the office of the Collector, or other officer duly authorized to hold sales under this Act,

in the Court of the Judge within whose jurisdiction the land advertised lies, and

in the *Munsif's* Court and police-*thana* of the division in which the estate or share of an estate to which the notification relates is situated, or, if the estate or share of an estate be situated within the jurisdiction of more than one *Munsif's* Court or police-*thana*, in some one or more of such Courts or *thanas*, and

also at the *cutcherry* of the *malguzar* or owner of the estate or share of an estate, or at some conspicuous place upon the estate or share of an estate, the same to be certified by the peon or other person employed for the purpose.

First.—Arrears other than those of the current year, or of the year immediately preceding.

Secondly.—Arrears due on account of estates other than that to be sold.

Thirdly.—Arrears of estates under attachment by order of any judicial authority, or managed by the Collector in accordance with such order.

Fourthly.—Arrears due on account of *takavi*, *pulbandi*, or other demands not being land-revenue, but recoverable by the same process as arrears of land-revenue.

6. The Collector or other officer duly authorized to hold sales under this Act shall, as soon as possible after the latest day of payment fixed in the manner prescribed in section 3 of this Act, issue notifications, in the language of the district, to be affixed in his own office and in the Court of the Judge of the district, specifying the estates or shares of estates which will be sold as aforesaid, and the day on which the sale of the same will commence, which day shall not be less than [thirty]
2* * * clear days from the date of affixing the notification in the office of the Collector or other officer as aforesaid.

Issue of
notifica-
tions of
sale.

¹This word was substituted for the word "fifteen" by sec. 3 of the Bengal Land-revenue Sales Act, 1868 (Ben. Act VII of 1868).

²The words "or more than thirty" were repealed, *ibid*,

(Section 7.)

And, if the Government revenue of any estate or share of an estate to be sold exceed the sum of five hundred rupees, a notification of the sale of such estate or share of an estate shall be published in the *Official Gazette*.

¹[The Collector or other officer duly authorised to hold sales, shall also issue notice of sale by registered post in the name of the recorded proprietors of the estate, and in case their number be more than five, in the name of at least five of the biggest recorded shareholders informing them of the particulars of sale. Such notice shall be issued simultaneously with, or as soon as may be after, the issue of the notification referred to above. If the sale does not take place the cost of such registered notices shall be payable by the defaulters within fifteen days of the date on which the sale was to take place and if it is not paid within that period, it shall be realised from the defaulters by any process authorised for realising an arrear of public revenue.

No sale shall take place until the officer conducting the sale has satisfied himself that the notification of sale has been duly published and the notices of sale have been sent to proprietors by registered post but the omission to serve such notice on any proprietor or any defect in the service of any such notice shall not by itself be a ground for the annulment of a sale under this Act.]

Except as hereinafter provided, all estates or shares of estates so specified shall, on the day notified for sale, or on the day or days following, be put up to public auction by and in the presence of the Collector or other officer as aforesaid, and shall be sold to the highest bidder.

And no payment or tender of payment, made after sunset of the said latest day of payment, shall bar or interfere with the sale, either at the time of sale or after its conclusion.

7. Whenever an estate or share of an estate is notified for sale as provided by section 6 of this Act, the Collector or other officer as aforesaid shall affix a proclamation, in the language of the district,

in his own office, and as soon thereafter as may be in the *Munifs'* Courts and police-*thanas* within which the estate or share of an estate, or any part of it, is situated, and also at the *cutcherry* of the *malguzar* or the owner of the estate or share of an estate, or at some conspicuous place upon the estate or share of an estate,

forbidding the *rai-yats* and under-tenants to pay to the defaulting proprietor any rent which has fallen due after the day fixed for the last day of payment, on pain of not being entitled to credit in their accounts with the purchaser for any sums so paid.

¹ Inserted by sec. 2 of the Bengal Land-revenue sales (Amendment) Act, 1943 (Ben. Act II of 1943),

Tender
after
latest day
of pay-
ment not
to stop sale.

Notice to
rai-yats,
etc.

of 1859.]

(Sections 8, 9.)

8. No claim to abatement or remission of revenue, unless the same shall have been allowed by the authority of ¹[the State Government], and no private demand or cause of action whatever, held or supposed to be held by any defaulter against ²[the Government], shall bar or render void or voidable a sale under this Act; nor shall the plea that money belonging to the defaulter, and sufficient to pay the arrear of revenue due, was in the Collector's hand bar or render void or voidable a sale under this Act, unless such money stand in the defaulter's name alone and without dispute, and unless, after application in due time made by the defaulter, or after the written agreement provided for in section 15 of this Act, the Collector shall have neglected, or refused on insufficient grounds to transfer it in payment of the arrear of revenue due.

Claims of defaulter against Government not to invalidate sale.

9. The Collector or other officer as aforesaid shall, at any time before sunset of the latest day of payment determined according to section 3 of this Act, receive as a deposit from any person not being a proprietor of the estate or share of an estate in arrear, the amount of the arrear of revenue due to be credited in payment of the arrear at sunset as aforesaid, unless before that time the arrear shall have been paid by a defaulting proprietor of the estate.

Deposits receivable from persons not proprietors.

And in case the person so depositing, whose money shall have been credited in the manner aforesaid, shall be a party in a suit pending before a Court of Justice for the possession of the estate or share from which the arrear is due or any part thereof, it shall be competent to the said Court to order the said party to be put into temporary possession of the said estate or share, or part thereof, subject to the rules in force for taking security in the cases of parties in civil suits.

And if the person so depositing, whose money shall have been credited as aforesaid, shall prove before a competent Civil Court that the deposit was made in order to protect an interest of the said person, which would have been endangered or damaged by the sale, or which he believed in good faith would have been endangered or damaged by the sale, he shall be entitled to recover the amount of the deposit, with or without interest as the Court may determine, from the defaulting proprietor.

And if the party so depositing, whose money shall have been credited as aforesaid, shall prove before such a Court that the deposit was necessary in order to protect any lien he had on the estate or share or part thereof, the amount so credited shall be added to the amount of the original lien.

¹The words "the Provincial Government" were substituted for the word "Government" by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was substituted for the word "Provincial" by paragraph 4 (1) of the Adaptation of Laws Order, 1950.

²The words "the Crown" were substituted for the word "Government" by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "Government" was substituted for the word "Crown" by paragraph 4 (1) of the Adaptation of Laws Order, 1950.

(Sections 10—12.)

Separation of shares held in common, by opening separate account.

10. When a recorded sharer of joint estate, held in common tenancy, desires to pay his share of the Government revenue separately, he may submit to the Collector a written application to that effect.

The application must contain a specification of the share held in the estate by the applicant.

The Collector shall then cause to be published in his own office, in the Court of the Judge, Magistrate (or Joint-Magistrate as the case may be), and *Munsifs*, and in the police-*thanas* in whose jurisdiction the estate or any part thereof is situated, as well as on some conspicuous part of the estate itself, a copy of the application made to him.

If, within six weeks from the date of the publication of these notices, no objection is made by any other recorded sharer, the Collector shall open a separate account with the applicant, and shall credit separately to his share all payments made by him on account of it. The date on which the Collector records his sanction to the opening of a separate account shall be held to be that from which the separate liabilities of the share of the applicant commence.

Separation of shares consisting of specific portions of land, by opening separate accounts.

11. When a recorded sharer of a joint-estate, whose share consists of a specific portion of the land of the estate, desires to pay his share of the Government revenue separately, he may submit to the Collector a written application to that effect. The application must contain a specification of the land comprised in his share, and of the boundaries and extent thereof, together with a statement of the amount of *sadar jama* heretofore paid on account of it.

On the receipt of this application the Collector shall cause it to be published in the manner prescribed for publication of notice in the last preceding section.

In the event of no objection being urged by any recorded co-sharer within six weeks from the time of publication, the Collector shall open a separate account with the applicant and credit separately to his share all payments made by him on account of it.

The date on which the Collector records his sanction to the opening of a separate account shall be held to be that from which the separate liabilities of the share of the applicant commence.

If objection be made, parties to be referred to Civil Court.

12. If any recorded proprietor of the estate, whether the same be held in common tenancy or otherwise, object that the applicant has no right to the share claimed by him, or that his interest in the estate is less or other than that claimed by him, or if the application be in respect of a specific portion of the land of an estate, that the amount of *sadar jama* stated by the applicant to have been heretofore paid on account of such portion of land is not the amount which has been recognized by the other sharers as the *jama* thereof, the Collector shall refer the parties to the Civil Court and shall suspend proceedings until the question at issue is judicially determined.

of 1859.]

(Sections 13—15.)

13. Whenever the Collector shall have ordered a separate account or accounts to be kept for one or more shares; if the estate shall become liable to sale for arrears of revenue, the Collector or other officer as aforesaid in the first place shall put up to sale only that share or those shares of the estate from which, according to the separate accounts, an arrear of revenue may be due.

Sale of separate shares.

In all such cases notice of the intention of excluding the share or shares from which no arrear is due shall be given in the advertisement of sale prescribed in section 6 of this Act. The share or shares sold, together with the share or shares excluded from the sale, shall continue to constitute one integral estate, the share or shares sold being charged with the separate portion, or the aggregate of the several separate portions, of *jama* assigned thereto.

14. If in any case of a sale held according to the provisions of the last preceding section the highest offer for the share exposed to sale shall not equal the amount of arrear due thereupon to the date of sale, the Collector or other officer as aforesaid shall stop the sale, and shall declare that the entire estate will be put up to sale for arrears of revenue at a future date, unless the other recorded sharer or sharers, or one or more of them, shall within ten days purchase the share in arrear by paying to [the State Government] the whole arrear due from such share.

Entire estate may be sold under certain conditions.

If such purchase be completed, the Collector or other officer as aforesaid shall give such certificate and delivery of possession as are provided for in sections 28 and 29 of this Act to the purchaser or purchasers, who shall have the same rights as if the share had been purchased by him or them at the sale.

If no such purchase be made within ten days as aforesaid, the entire estate shall be sold, after notification for such period and publication in such manner as is prescribed in section 6 of this Act.

15. If any recorded proprietor or co-partner of an estate shall deposit with the Collector money, or Government securities endorsed and made payable to the order of the Collector and shall sign an agreement pledging the same ¹[to the State Government] by way of security for the *jama* of the entire estate, and authorizing the Collector to apply to the payment of any arrear of revenue that may become due from that estate the whole or any portion of the said money or securities that may be necessary for that purpose, then in the case of any arrear of revenue due from the said estate not being paid before sunset of the latest day of payment fixed under section 3 of this Act the Collector shall apply to the payment of such arrear the said

Deposit for protection of estate from sale.

¹ See foot-note 1 on page 389, *ante*.

² The words "to the Provincial Government" were substituted for the words "to Government" by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was subsequently substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

(Sections 16—19.)

money or securities, or such part thereof or of any interest due on the said securities, as may be necessary; and for this purpose the Collector shall first apply any money that may be in his hands and any interest that may be due upon such securities, and may then sell and transfer the securities for any balance that may remain.

And so long as any money or securities as aforesaid, sufficient to cover any arrear that may fall due, shall remain and be available as aforesaid, the estate for the protection of which the said deposit was made shall be exempted from sale for arrears of revenue.

All moneys and securities so deposited shall be exempt from attachment otherwise than in execution of a decree of a Civil Court.

With-
drawal of
deposit.

16. It shall be competent to the person making a deposit under the provision of the last preceding section, or his representative or assignee, at any time, to withdraw the deposit and to revoke the pledge of the same.

Estate
under
attach-
ment.

17. * * * * * no estate held under attachment by the Revenue-authorities otherwise than by order of a judicial authority shall be liable to sale for arrears accruing whilst it was so held under attachment.

And no estate held under attachment or managed by a Revenue officer, in pursuance of an order of a judicial authority, shall be liable to sale for the recovery of arrears of revenue accruing during the period of such attachment or management, until after the end of the year in which such arrears accrued.

Power to
exempt
from sale.

18. It shall be competent to the Collector or other officer as aforesaid, at any time before the sale of an estate or share of an estate shall have commenced, to exempt such estate or share from sale; and in like manner it shall be competent to the Commissioner of Revenue, at any time before the sale of an estate or share of an estate shall have commenced, to exempt such estate or share from sale, by a special order to the Collector or other officer as aforesaid to that effect in each case; and no such sale shall be legal if held after the receipt of such order of exemption:

Proviso.

Provided, however, ²that the Collector or other officer as aforesaid, or the Commissioner, shall duly record in a proceeding the reason for granting such exemption; and provided also that an order for exemption so issued by the Commissioner shall not affect the legality of a sale which may have taken place before the receipt by the Collector or other officer as aforesaid of the order of exemption.

Sales
where
to be
made.

19. Sales shall ordinarily be made by the Collector or other officer as aforesaid in the Land-revenue office at the *sadar* station of the district:

¹The original words and figures which were repealed by the Bengal Court of Wards (Amendment) Act, 1881 (Ben. Act III of 1881), are omitted.

²Formal words which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

of 1859.]

(Sections 20—23.)

Provided, however, that it shall be competent to the ¹[Commissioner] to prescribe a place for holding sales other than such office whenever ²[he] shall consider it beneficial to the parties concerned.

20. In case the Collector or other officer as aforesaid shall be unable, from sickness, from the occurrence of a holiday or from any other cause, to commence the sale on the day of sale fixed as aforesaid, or if, having commenced it, he be unable, from any cause, to complete it, he shall be competent to adjourn it to the next day following, not being Sunday or other close holiday, recording his reasons for such adjournment, forwarding a copy of such record to the Commissioner of Revenue and announcing the adjournment by written proclamation stuck up in his *cutcherry*; and so on, from day to day, until he shall be able to commence upon or to complete the sale; but with the exception of adjournments so made, recorded and reported, each sale shall invariably be made on the day of sale fixed in the manner aforesaid.

Adjournment of sales.

21. On the day of sale fixed according to section 6 of this Act, sales shall proceed in regular order; the estate to be sold bearing the lowest number on the *tauji* or register in use in the Collector's office of the district being put up first, and so on, in regular sequence; and it shall not be lawful for the Collector or other officer as aforesaid to put up any estate out of its regular order by number, except where it may be necessary to do so in default of deposit, as provided in section 22 of this Act.

Order of selling

22. The party who shall be declared the purchaser of an estate or share of an estate at any such public sale as aforesaid shall be required to deposit immediately, or as soon after the conclusion of the sale of the estate or share as the Collector or other officer as aforesaid may think necessary, either in cash, ³[Reserve Bank of India] ⁴* * post-bills, ⁵[currency notes], or Government securities, to be valued at the market-rate of the day, duly endorsed, twenty-five *per cent.* on the amount of his bid; and in default of such deposit the estate or share shall forthwith be put up again and sold.

Deposit on account of purchase-money.

23. The full amount of purchase-money shall be made good by purchaser before sunset of the thirtieth day from that on which the sale of the estate or share of an estate bought by him took place, reckoning that day as one of the thirty; or if the thirtieth day be a Sunday or other close holiday, then on

Full Payment of purchase-money.

¹This word was substituted for the words "Board of Revenue" by the Decentralization Act, 1914 (IV of 1914).

²This word was substituted for the word "they", *ibid.*

³These words were substituted for the words "Bank of Bengal" by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

⁴The words "notes or," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

⁵These words were inserted by the Amending Act, 1903 (I of 1903).

(Sections 24—27.)

the first office day after the thirtieth ; and, in default of payment within the prescribed period as aforesaid, the deposit shall be forfeited to Government, the estate or share shall be re-sold, and the defaulting purchaser shall forfeit all claim to the estate or share, or to any part of the sum for which it may subsequently be sold.

And, in the event of the proceeds of the sale which may be eventually consummated being less than the price bid by the defaulting bidder aforesaid, the difference shall be leviable from him by any process authorized for realizing an arrear of public revenue, and such difference shall be taken and considered to be a part of the purchase-money, and shall be dealt with in the manner hereinafter prescribed for the disposal thereof.

Re-sale.

24. When default is made in the payment of purchase-money, a notification of the intended re-sale shall be published for the period and in the manner prescribed in section 6 of this Act, but such notification shall not be published until the expiration of three clear days after the day on which the default shall have occurred ; and if the payment or tender of payment of the arrear on account of which the estate or share was first sold, and of any arrear which may have subsequently become due, shall be made by or on behalf of the proprietor of the estate or share before sunset of the third day, the issue of the notification of re-sale shall be stayed. The rules contained in the last preceding section shall be applicable to every such re-sale :

Provided that, if default of payment of purchase-money shall occur more than once, the amount to be recovered from the defaulting bidders shall be the difference between the highest bid and the proceeds of the sale eventually consummated, which amount may be levied in manner aforesaid from any of the defaulting bidders to the extent of the amount by which his bid exceeds the amount realized.

25. (*Appeals.*)—*Rep. by the Bengal Land-revenue Sales Act, 1868 (Ben. Act VII of 1868).*

Annulment of sale in special cases.

26. It shall be competent to the Commissioner of Revenue, on the ground of hardship or injustice, to suspend the passing of final orders in any case of appeal from a sale, and to represent the case to the Board of Revenue, who, * * * * * may annul the sale and cause the estate or share of an estate to be restored to the proprietor on such conditions as may appear equitable and proper.

Sales when final.

27. All sales of which the purchase-money has been paid up as prescribed in section 23 of this Act, and against which no appeal shall have been preferred ¹[or in respect of which no application under section 37A has been made or in respect of which no appeal under sub-section (3) of section 37B has been

¹ The words "if they see cause, may recommend to the Local Government to annul the sale ; and the Local Government in any such case" were omitted by the Decentralization Act, 1914 (IV of 1914).

² Inserted by sec. 2 of the Bengal Land-revenue Sales (Amendment) Act, 1942 (Ben. Act VII of 1942).

of 1859.]

(Sections 28—31.)

preferred], shall be final and conclusive at noon of the ¹[sixtieth] day from the day of sale, reckoning the said day of sale as the first of the said ¹[sixty] days.

And sales against which an appeal may have been preferred and dismissed by the Commissioner ²[or in respect of which an application under section 37A may have been made or an appeal under sub-section (3) of section 37B may have been preferred and such application or appeal has been dismissed] shall be final and conclusive from the date of such dismissal, if more than ¹[sixty] days from the day of sale, or if less, then at noon of the ¹[sixtieth] day as above provided.

28. Immediately upon a sale becoming final and conclusive the Collector or other officer as aforesaid shall give to the purchaser a certificate of title in the form prescribed in Schedule A annexed to this Act.

Certificate of sales.

And the said certificate shall be deemed in any Court of Justice sufficient evidence of the title to the estate or share of an estate sold being vested in the person or persons named from the date specified.

And the Collector shall also notify such transfer by written proclamation in his own office, and in the Courts of the *Munsifs* and police-*thanas* within whose jurisdictions any part of the estate or share sold shall be situated.

29. The Collector or other officer as aforesaid shall order delivery of possession of the estate or share purchased to be made by removing any person who may refuse to vacate the same, and by proclamation to the occupants of the property by beat of drum or in such other mode as may be customary, at some convenient place or places; and by affixing a copy of the certificate at the *mâl cutcherry* or in some conspicuous place of the estate or share of an estate purchased.

Delivery of possession.

30. The party certified as the proprietor of an estate or share of an estate by purchase under this Act shall be answerable for all instalments of the revenue of Government which may fall due after the latest day of payment aforesaid.

Liability of purchaser.

31. The Collector shall apply the purchase-money, first, to the liquidation of all arrears due upon the latest day of payment from the estate or share of an estate sold; and, secondly, to the liquidation of all outstanding demands ³[including the cost of notices referred to in section 6] debited to the estate or share of an estate in the public accounts of the district: holding the residue, if any, in deposit on account of the late

Application of purchase-money.

¹The words "sixtieth" and "sixty" were substituted for the words "thirtieth" and "thirty" respectively, by sec. 4 of the Bengal Land-revenue Sales Act, 1868 (Ben. Act VII of 1868).

²Inserted by sec. 2 of the Bengal Land-revenue Sales (Amendment) Act, 1942 (Ben. Act VII of 1942).

³Inserted by sec. 3 of the Bengal Land-revenue Sales (Amendment) Act, 1943 (Ben. Act II of 1943).

(Sections 32, 33.)

recorded proprietor or proprietors of the estate or share of an estate sold, or their heirs or representatives, to be paid to his or their receipt on demand in manner following : to wit, in shares proportioned to their recorded interest in the estate or share of an estate sold, if such distinction of shares were recorded, or if not, then as an aggregate sum to the whole body of proprietors upon their joint receipt.

And, if before payment to the late proprietor or proprietors of any surplus that may remain of the purchase-money, the same be claimed by any creditor in satisfaction of a debt, such surplus shall not be payable to such claimant, nor shall it be withheld from the proprietor, except under precept of a Civil Court.

Notification
of annul-
ment of
sale.

32. The annulment by a Commissioner or by ¹[Board of Revenue] of a sale made under this Act shall be publicly notified by the Collector or other officer as aforesaid, in the same manner as the becoming final and conclusive of sales is required to be notified by section 28 of this Act ; and the amount of deposit and balance of purchase-money shall be forthwith returned to the purchaser with interest thereon at the highest rates of the current public securities : which shall be paid by ²[the State Government], unless the proprietor shall have become liable for the same under the provisions of ³[section 2 of the Bengal Land-revenue Sales Act, 1868,] or section 26 of this Act.

Ben. Act
VII of
1868.

Juris-
diction of
Civil
Courts in
suits to
annul
sales.

33. No sale for arrears of revenue or other demands realizable in the same manner as arrears of revenue are realizable, made after the passing of this Act, shall be annulled by a Court of Justice, except upon the ground of its having been made contrary to the provisions of this Act, and then only on proof that the plaintiff has sustained substantial injury by reason of the irregularity complained of : and no such sale shall be annulled upon such ground, unless such ground shall have been declared and specified in an appeal made to the Commissioner under ³[section 2 of the Bengal Land-revenue Sales Act, 1868] ; and no suit to annul a sale made under this Act shall be received by any Court of Justice, unless it shall be instituted within one year from the date of the sale becoming final and conclusive as provided in section 27 of this Act : and no person shall be entitled to contest the legality of a sale after having received any portion of the purchase-money :

¹These words were substituted for the word "Government" by the Decentralization Act, 1914 (IV of 1914).

²The words "the Provincial Government" were substituted for the words "the Government" by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was subsequently substituted for the word "Provincial" by paragraph 4 (1) of the Adaptation of Laws Order, 1950.

³These words and figures were substituted for the word and figure "section 23" by the Amending Act, 1903 (I of 1903),

of 1859.]

(Sections 34—37.)

Provided, however, that nothing in this Act contained shall be construed to debar any person considering himself wronged by any act or omission connected with a sale under this Act from his remedy in a personal action for damages against the person by whose act or omission he considers himself to have been wronged.

Proviso.

34. If a sale made under this Act be annulled by a final decree of a Civil Court, application for the execution of such decree shall be made within six months after the date thereof; otherwise the party in whose favour such decree was passed shall lose all benefit therefrom.

Effects of annulment of sales by decree of Court.

And no order for restoring such decree-holder to possession shall be passed until any amount of surplus purchase-money that may have been paid away by order of a Civil Court be repaid by him, with interest at the highest rate of the current Government securities.

And, if such party shall neglect to pay any amount so recoverable within six months from the date of such final decree, he shall lose all benefit therefrom.

35. In the event of a sale being annulled by a final decree of a Court of Justice, and the former proprietor being restored to possession, the purchase-money shall be refunded to the purchaser by ¹[the State Government], together with interest at the highest rate of the current public securities.

If sale annulled, purchase-money to be refunded.

36. Any suit brought to oust the certified purchaser as aforesaid on the ground that the purchase was made on behalf of another person not the certified purchaser, or on behalf partly of himself and partly of another person, though by agreement the name of the certified purchaser was used, shall be dismissed with costs.

Dismissal of suit brought to oust purchaser on ground that purchase was made for another.

37. (1) The purchaser of an entire estate in the permanently settled districts of West Bengal sold under this Act for the recovery of arrears due on account of the same, shall acquire the estate free from all encumbrances which may have been imposed after the time of settlement and shall be entitled to avoid and annul all tenures, holdings and leases with the following exceptions:—

Rights of a purchaser of a permanently settled estate sold for its own arrears.

- (a) tenures and holdings which have been held from the time of the permanent settlement either free of rent or at a fixed rent or fixed rate of rent, and
- (b) (i) tenures and holdings not included in exception (a) above made, and
- (ii) other leases of land whether or not for purposes connected with agriculture or horticulture,

¹ See foot-note 2 on page 396. ante.

² Substituted by sec. 4 of the Bengal Land-revenue Sales (West Bengal Amendment) Act, 1950 (West Ben. Act VII of 1950), for the original sec. 37,

[Act XI

(Section 37A.)

existing at the date of issue of the notification for sale of the estate under this Act :

Provided that notwithstanding anything contained in any law for the time being in force or in any lease or contract no person shall be entitled to hold under such a purchaser as is aforesaid any tenure, holding or lease coming within exception (b) above made, free of rent or at a low rent or at a rent or rate of rent fixed in perpetuity or for any specified period unless the right so to hold has been expressly recognised under any law for the time being in force by any competent civil or revenue court ; and the purchaser shall be entitled to proceed in the manner prescribed by any law for the time being in force for the determination of a fair and equitable rent of such tenure, holding or lease.

(2) For the purposes of this section—

(a) (i) "tenure" includes a tenure as defined in the Bengal Tenancy Act, 1885, and

VIII of 1885.

(ii) "holding" includes a holding as defined in the Bengal Tenancy Act, 1885 ;

(b) any rent which is lower than what has been entered in any record of rights prepared and finally published under Chapter X of the Bengal Tenancy Act, 1885, before the commencement of the Bengal Land-revenue Sales (West Bengal Amendment) Act, 1950, shall be presumed to be a low rent ;

West Ben. Act VII of 1950.

(c) section 75A of the Bengal Tenancy Act, 1885, shall not have any application.

Applica-
tion for
setting
aside
sale.

¹37A. Where any estate or share of an estate has been sold under this Act, the defaulting holder of the estate or of a share thereof or any person who holds an interest therein by virtue of a title acquired before such sale or any person whose interests are affected by the sale may, at any time within thirty days from the date of the sale, apply to the Collector to have the sale set aside on his depositing with the Collector—

(a) for payment to the purchaser, a sum equal to three per cent. of the purchase-money but not less than one rupee ; and

(b) for payment to the ²[State] Government, a sum equal to the amount specified in the notification of sale as that for the recovery of which the sale was ordered together with such costs, if any, as the ²[State] Government may have incurred subsequent to the issue of such notification of sale.

¹Inserted by sec. 3 of the Bengal Land-revenue Sales (Amendment) Act, 1942 (Ben. Act VII of 1942).

²Substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950,

of 1859.]

(Sections 37B—52.)

¹37B. (1) Notwithstanding anything contained elsewhere in this Act where the deposit required by section 37A is made within thirty days from the date of the sale, the Collector shall make an order setting aside the sale, provided that no order shall be made unless the notice of the application has been given to the purchaser.

Sale when to be set aside.

(2) No suit to set aside an order made under this section shall be brought by any person against whom such order is made.

(3) An appeal shall lie to the Commissioner against an order made under sub-section (1) refusing to set aside a sale if such appeal is preferred within thirty days from the date of the order.

¹37C. Where a sale is set aside under section 37B, the purchaser shall be entitled to an order for repayment of his purchase-money with or without interest as the Collector may direct.

Return of purchase-money in certain cases.

¹37D. (1) Where the sale has been set aside at the instance of, and on the deposit by, a person other than the defaulting proprietor or proprietors, the amount paid for such setting aside of the sale, shall be deemed to be a debt bearing interest at six *per cent. per annum* and secured by a mortgage of the estate or a share thereof sold in favour of the said person.

Amount paid to prevent sale to be in certain cases a mortgage-debt on the estate or share thereof.

(2) His mortgage shall take priority over every other charge on the said estate or share other than a charge for arrears of revenue.

(3) He shall be entitled to the possession of the said estate or share as mortgagee of the defaulting proprietor or proprietors and to retain possession of it as such until the said debt with interest thereon has been discharged.

(4) Nothing in this section shall affect any other remedy to which any such person would be entitled.

38, to 51. [*Repealed by the Bengal Land-revenue Sales (West Bengal Amendment) Act, 1950 (West Ben. Act VII of 1950.)*]

⁵52. The provisions of section 37 of this Act shall *mutatis mutandis* apply in the case of a purchaser of an estate in a district of West Bengal not permanently settled, sold under this Act for the recovery of arrears due on account of the same.

Rights of purchaser of an estate not permanently settled, sold for its own arrears.

¹Inserted by sec. 3 of the Bengal Land-revenue Sales (Amendment) Act, 1942 (Ben. Act VII of 1942).

²Substituted by sec. 6 of the Bengal Land-revenue Sales (West Bengal Amendment) Act, 1950 (West Ben. Act VII of 1950), for the original sec. 52.

(Sections 53—58.)

Rights of purchaser being sharer in estate ;

and of purchaser of estate not sold for its own arrears.

Rights of purchasers of shares of estate.

Recovery of arrears due to defaulters.

Punishment for contempt.

Default as to deposit a contempt.

Government may purchase at sale.

53. Excepting * * * * sharers with whom the Collector, under sections 10 and 11 of this Act, has opened separate accounts, purchase the estate of which he is proprietor or co-partner, or who by repurchase or otherwise may recover possession of the said estate, after it has been sold for arrears under this Act, and likewise any purchaser of an estate sold for arrears or demands other than those accruing upon itself, shall by such purchase acquire the estate subject to all its encumbrances existing at the time of sale, and shall not acquire any rights in respect to undertenants or *raiya*ts which were not possessed by the previous proprietor at the time of the sale of the said estate.

54. When a share or shares of an estate may be sold under the provisions of section 13 or section 14, the purchaser shall acquire the share or shares subject to all encumbrances, and shall not acquire any rights which were not possessed by the previous owner or owners.

55. Arrears of rent which on the latest day of payment may be due to the defaulter from his under-tenants or *raiya*ts shall, in the event of a sale, be recoverable by him after the said latest day, by any process except distraint which might have been used by him for that purpose on or before the said latest day.

56. Any Collector or other officer as aforesaid conducting a sale under this Act shall be competent to punish any contempt committed in his presence in open *cutcherry* or office for the time being, by fine, to an extent not exceeding two hundred rupees, commutable, if not paid, to imprisonment in the civil jail for a period not exceeding one month ; and the Magistrate to whom such an offender may be sent by a Collector or other officer as aforesaid, shall carry his sentence into effect :

Provided that an appeal from any order passed under this section shall lie to the Revenue Commissioner, whose decision shall be final.

57. A default to make good a bid by making the deposit required by section 22 of this Act shall be held to be a contempt.

58. When an estate is put up for sale under this Act for the recovery of arrears of revenue due thereon, if there be no bid, the Collector or other officer as aforesaid may purchase the estate on

¹The words and figures "shares in estates under *batwara* who may have saved their sharers from sale under sections 33 and 34, Regulation 19, 1814, and", which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

of 1859.]

(Sections 59—62.)

account of the ¹[State Government] for one rupee, or if the highest bid be insufficient to cover the said arrears and those subsequently accruing up to the date of sale, the Collector or other officer as aforesaid may take or purchase the estate on account of the ¹[State Government] at the highest amount of bid ; in both which cases the ¹[State Government] shall acquire the property subject to the provisions of this Act.

59. [*Fees and charges demandable by Collector.*—Rep. by the Bengal Land-revenue Sales (Amendment) Act, 1862 (Ben. Act III of 1862).

60. The provisions of Regulation VII, 1822², and Regulation IX, 1825³, shall be in force in every estate in any part of which a measurement, survey, or local inquiry may be made under this Act, and in every estate purchased or taken on account of ⁴[the State Government] under this Act.

Regulations VII, 1822, and IX, 1825 in force in certain estates.

61. In the construction of this Act the word "Collector" shall include a Deputy Collector or other officer exercising, by the authority of ⁴[the State Government], the powers of a Collector or Deputy Collector.

Interpretation.

62. The operation of this Act shall be confined to such parts of the Lower Provinces in the Presidency of Fort William in Bengal as are or shall be subject to the general Regulation of that Presidency.

Application of Act.

¹The words "Provincial Government" were substituted for the word "Government" by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was subsequently substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²The Bengal Land-revenue Settlement Regulation, 1822.

³The Bengal Land-revenue Settlement Regulation, 1825.

⁴The words "the Provincial Government" were substituted for the word "Government" by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was subsequently substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

[Act XI of 1859.]

(Schedules.)

¹SCHEDULE A.

I certify that A. B. has purchased, under Act No. 11 of 1859, the *mahal* (or share of a *mahal*) specified below, standing in the *tauzi* of the district of and that his purchase took effect on the day of (*being the day after that fixed for last day of payment*).

(Signed.)

D. E.,
Collector.

SPECIFICATION.

(If of an entire *mahal*.)

Tauzi number
Name of *mahal*
Name of the former proprietor
Sadar jama

(If of a share of a *mahal*.)

Tauzi number of the entire *mahal*
Name of the entire *mahal*
Sadar jama of the entire *mahal*
Description of the share sold
Subordinate *tauzi* number of the share sold
Name of the former proprietor of the share sold
Sadar jama for which the share sold is separately liable

SCHEDULE B.

FEES.

Rep. by the Amending Act, 1903 (1 of 1903).

¹This Schedule is referred to in section 28.

Act XIX of 1867

[The Darjeeling (High Court's Jurisdiction) Act, 1867.]¹

SHORT TITLE GIVEN ... Act I of 1903.

REPEALED IN PART ... Act XVI of 1874.

(8th March, 1867.)

An Act to make further provision for the Administration of justice in the District of Darjeeling.

Whereas it is expedient to make further provision for the administration of justice in the District of Darjeeling ; It is hereby enacted as follows :—

Preamble.

1. [Repeal of Act X of 1863.]—Rep. by the Repealing Act, 1874 (XVI of 1874).

2. The High Court of Judicature for the Bengal Division of the Presidency of Fort William shall have and exercise, with regard to the District of Darjeeling, all such jurisdiction and powers as it has and exercises with regard to any other territory.

High Court, Fort William, to exercise jurisdiction over Darjeeling.

¹SHORT TITLE.— This short title was given by the Amending Act, 1903 (I of 1903).

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see the *Gazette of India*, 1867, page 33, and for Proceedings in Council, see *ibid.*, 1867, Supplement, pages 1, 41, 162 and 219.

LOCAL EXTENT.— This Act extends only to the District of Darjeeling.

Act VII of 1870
(The Court-fees Act, 1870.)

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~~Pages 400-02~~ —

Strike out the Court-fees Act, 1870 (Act VII of 1870), in its application to West Bengal and *insert* the following note, namely:—

[Repealed by West Ben. Act X of 1970, section 50(1).]

[No. 9, dated the 1st October, 1973.]

~~on their original sides.~~

Leyy of fees in Presidency Small Cause Courts.

4. Fees on documents filed, etc., in High Courts in their extraordinary jurisdiction :
in their appellate jurisdiction :
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 - (d) for an injunction ;
 - (e) for easements ;
 - (f) for accounts ;
 - (v) for possession of land, buildings or gardens ;
 - (vi) to enforce a right of pre-emption ;
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 - (vii) for interest of assignee of land-revenue ;
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9. (*Repealed.*)
10. (*Repealed.*)
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of 1870.]

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				Order, 1956.

(11th March, 1870.)

CHAPTER I

PRELIMINARY.

1. This Act may be called the Court-fees Act, 1870.

It extends to ²[the whole of India except the territories which, immediately before the 1st November, 1956, were comprised in Part B States] ;

And it shall come into force on the first day of April, 1870.

Short title.

Extent of Act.

Commence-
ment of
Act.

¹For the Statement of Objects and Reasons, see the "Gazette of India," 1869, Pt. V, page 57 and for Proceedings in Council, see *ibid*, 1869, Supplement, pages 1179 and 1452 ; *ibid*, 1870, Supplement, pages 52, 378, 421, 427 and 434.

²The words "the whole of India except Part B States" were substituted for the words "all the Provinces of India" by paragraph 3 (2) of the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948, and the words "the territories which immediately before the 1st November, 1956, were comprised in Part B States" were subsequently substituted for the words "Part B States" by the Schedule to the Adaptation of Laws (No. 2) Order, 1956.

[Act VII

(Chapter I.—Preliminary.—Secs. 1A, 2.—Chapter II.—Fees payable in Courts and in Public Offices.—Section 3.)

Definition of "Appropriate Government".

¹1A. In this Act "the Appropriate Government" means, in relation to fees or stamps relating to documents presented or to be presented before any officer serving under the Central Government, that Government, and in relation to any other fees or stamps, the ²[State] Government.

Definitions.

³2. In this Act, unless there is anything repugnant in the subject or context,—

- (1) "appeal" includes a cross-objection ;
- (2) "Chief Controlling Revenue-authority" means the Board of Revenue ;
- (3) "Collector" includes any officer not below the rank of sub-deputy collector appointed by the Collector to perform the functions of a Collector under this Act ;
- (4) "suit" includes an appeal from a decree except in section 8A.

CHAPTER II.

⁴FEES PAYABLE IN COURTS AND IN PUBLIC OFFICES.

Levy of fees in High Courts on their original sides.

3. The fees payable for the time being to the clerks and officers (other than the sheriffs and attorneys) of ⁵[the High Courts other than those of Kerala, Mysore and Rajasthan],

or chargeable in each of such Courts under No. 11 of the First, and Nos. 7, 12, 14, ⁶*20 and 21 of the Second Schedule to this Act annexed ;

Levy of fees in Presidency Small Cause Courts.

and the fees for the time being chargeable in the Courts of Small Causes at the Presidency towns, and their several offices ; shall be collected in manner hereinafter appearing.

¹Section 1A was inserted by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

²Substituted for the word "Provincial" by paragraph 4 (i) of the Adaptation of Laws Order, 1950.

³Section 2 was substituted for the original section by sec. 3 of the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act VII of 1935.)

⁴This heading was substituted for the original heading "Fees in the High Courts and in the Courts of Small Causes at the Presidency-towns" by sec. 4 of the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act VII of 1935).

⁵The words "the High Courts for Part A States" were substituted by para. 3 and the First Schedule of the Adaptation of Laws Order, 1950, for the words "the Courts which are High Courts for the purposes of the Government of India Act, 1935".

⁶The figure "16," which was repealed by sec. 2 and Schedule 1 of the Amending Act, 1891 (XII of 1891), is omitted.

of 1870.]

(Chapter II.—Fees payable in Courts and in Public Offices.—
Sections 4, 5.)

4. No document of any of the kinds specified in the First or Second Schedule to this Act annexed, as chargeable with fees, shall be filed, exhibited or recorded in, or shall be received or furnished by, any of the said High Courts in any case coming before such Court in the exercise of its extraordinary original civil jurisdiction ;

Fees on documents filed, etc., in High Courts in their extraordinary jurisdiction :

or in the exercise of its extraordinary original criminal jurisdiction ;

or in the exercise of its jurisdiction as regards appeals from the ¹[judgments (other than judgments passed in the exercise of the ordinary original civil jurisdiction of the Court) of one] or more judges of the said Court, or of a Division Court ;

in their appellate jurisdiction :

or in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence ;

or in the exercise of its jurisdiction as a Court of reference or revision ;

as Courts of reference and revision.

unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said Schedules as the proper fee for such document.

5. When any difference arises between the officer whose duty it is to see that any fee is paid under this chapter and any suitor or attorney, as to the necessity of paying a fee or the amount thereof, the question shall, when the difference arises in any of the said High Courts, be referred to the taxing-officer, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the Chief Justice of such High Court, or of such Judge of the High Court as the Chief Justice shall appoint either generally or specially in this behalf.

Procedure in case of difference as to necessity or amount of fee.

When any such difference arises in any of the said Courts of Small Causes, the question shall be referred to the Clerk of the Court, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the first Judge of such Court.

The Chief Justice shall declare who shall be taxing-officer within the meaning of the first paragraph of this section.

¹ These words and brackets were substituted for the words "judgment of two" by sec. 2 of the Court-fees (Amendment) Act, 1922 (XIX of 1922).

[Act VII

(Chapter—II.—Fees payable in Courts and in Public Offices.—
Sections 6, 6A.—Chapter III.—Computation of Fees.—Section 7.)

Fees on documents filed, etc., in Mufassil Courts or in public offices.

16. ¹[(1)] Except in the Courts hereinbefore mentioned, no document of any of the kinds specified as chargeable in the First or Second Schedule to this Act annexed shall be filed, exhibited or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such document there ²[has been paid] a fee of an amount not less than that indicated by either of the said Schedules as the proper fee for such document.

³(2) Notwithstanding anything contained in sub-section (1) or in any other Act, a Court may receive a plaint or memorandum of appeal in respect of which an insufficient fee has been paid, ⁴[subject to the condition that the plaint or memorandum of appeal shall be rejected unless the plaintiff or appellant, as the case may be, pays to the Court within a time to be fixed by the Court such reasonable sum on account of court-fees as the Court may direct.]

Document inadmissible unless fees collected by stamp purchased in West Bengal.

⁵6A. Notwithstanding anything contained in this Act or in any other law for the time being in force, no document of any of the kinds specified as chargeable under this Chapter shall be filed, exhibited or recorded in any Court of Justice, or shall be received, furnished or acted upon by any such court or by any public officer, unless, in respect of such document, the stamp referred to in section 25 has been purchased from a person authorised or appointed to sell stamps in West Bengal.

CHAPTER III.

"COMPUTATION OF FEES.

Computation of fees payable in certain suits :

7. The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows :—

for money ;

(i) In suits for money (including suits for damages or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically)—according to the amount claimed :

for maintenance and annuities ;

(ii) In suits for maintenance and annuities or other sums payable periodically—according to the value of the subject-matter of the suit, and such value shall be deemed to be ten times the amount claimed to be payable for one year :

¹Section 6 was transferred from Chapter III and inserted after section 5 in Chapter II and was renumbered as sub-section (1) of section 6 by sec. 6(1) of the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act VII of 1935.)

²These words were substituted for the words "be paid", *ibid*.

³Sub-section (2) was added by sec. 6(2), *ibid*.

⁴These words were substituted for the original words by sec. 2 of the Court-fees (Bengal Third Amendment) Act, 1935 (Ben. Act I of 1936).

⁵This section was inserted by section 3 of the Court-fees (West Bengal Amendment) Act, 1959 (West Ben. Act XXIII of 1959).

⁶This heading was substituted for the original heading "Fees in other Courts and in Public offices" by sec. 5 of the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act VII of 1935).

of 1870.]

(Chapter III.—Computation of Fees.—Section 7.)

¹ Provided that, in suits by widows for maintenance such value shall be deemed to be the amount claimed to be payable for one year.

- (iii) In suits for movable property other than money, where the subject-matter has a market-value—according to such value at the date of presenting the plaint :

for movable property having a market-value ;

- (iv) In suits—

- (a) for movable property where the subject-matter has no market-value, as, for instance, in the case of documents relating to title,

for movable property of no market-value ;

- (b) *omitted by sec. 7 (1) of the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act VII of 1935).*

- (c) to obtain a declaratory decree or order, where consequential relief is prayed,

for a declaratory decree and consequential relief ;

- (d) to obtain an injunction,

for an injunction ;

- (e) for a right to some benefit (not herein otherwise provided for) to arise out of land, and

for case-ments ;

- (f) for accounts—

for accounts ;

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal ²[subject to the provisions of section 8C.]

In all such suits the plaintiff shall state the amount at which he values the relief sought ³* * *.

- ⁴(v) In suits for the possession of land, buildings or gardens ⁵[not being suits referred to in clause (vA)]—

for possession of land, buildings or gardens ;

- (a) according to the value of the subject-matter, and such value shall be deemed to be fifteen times the nett profits which have arisen from the land, building or garden during the year next before the date of presenting the plaint, or if the Court sees reason to think that such profits have been wrongly estimated, fifteen times such amount as the Court may assess as such profits or according to the market-value of the land, building or garden,

whichever is lower ;

¹This proviso was added by s. 2 of the Ajmer-Marwara Court-fees (Amendment) Act, 1930 (XXXI of 1930). It applies to Ajmer-Marwara only.

²These words were inserted by sec. 7(2) of the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act VII of 1935).

³The words "and the provisions of the Code of Civil Procedure, section thirty-one, shall apply as if for the word 'claim' the words 'relief sought' were substituted", which were repealed by sec. 2 and Schedule I of the Amending Act, 1891 (XII of 1891), are omitted.

⁴Paragraph (v) was substituted for the original paragraph by sec. 7(3) of the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act VII of 1935).

⁵These words were inserted by sec. 3(5) of the Court-fees (West Bengal Amendment) Act, 1963 (West Ben. Act XVIII of 1963).

[Act VII

(Chapter III.—Computation of Fees.—Section 7.)

- (b) if, in the opinion of the Court, such profits are not readily ascertainable or assessable, or where there are no such profits, according to the market-value of the land, building or garden :

Explanation.—In this paragraph “building” includes a house, out-house, stable, privy, urinal, shed, hut, wall and any other such structure, whether of masonry, bricks, wood, mud, metal or any other material whatsoever :

¹(vA) In a suit for recovery of possession of immovable property from—

(a) a trespasser, where no declaration of title to property is either prayed for or necessary for disposal of the suit,—according to the amount at which the relief sought is valued in the plaint subject to the provisions of section 8C ;

(b) a licensee upon revocation or termination of his license,—

(i) where a license fee is payable by the licensee in respect of the immovable property to which the suit refers, according to the amount of the license fee of the immovable property payable for the year next before the date of presenting the plaint, or

(ii) where no such license fee is payable by the licensee, according to the amount at which the relief sought is valued in the plaint subject to the provisions of section 8C :

to enforce a right of pre-emption ;

²(vi) In suits to enforce a right of pre-emption—according to the market-value of the land, building or garden in respect of which the right is claimed :

Explanation.—In this paragraph “building” has the same meaning as in paragraph (v) :

for partition and separate possession of a share of joint family property, etc. ;

³(viA) In suits for partition and separate possession of a share of joint family property or of a joint property, or to enforce a right to a share in any property on the ground that it is joint family property or joint property—

if the plaintiff has been excluded from possession of the pro-

¹Inserted by sec. 3(2) of the Court-fees (West Bengal Amendment) Act, 1963 (West Ben. Act XVIII of 1963).

²Paragraph (vi) was substituted for the original paragraph by sec. 7(4) of the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act VII of 1935).

³Paragraph (viA) was inserted by sec. 7(5), *ibid*.

of 1870.]

(Chapter III.—*Computation of Fees.*—Section 7.)

perty of which he claims to be a coparcener or co-owner, according to the market-value of the share in respect of which the suit is instituted :

(vii) In suits for the interest of an assignee of land-revenue—fifteen times his nett profits as such for the year next before the date of presenting the plaint :

for interest
of assignee
of land-
revenue ;

(viii) In suits to set aside an attachment of land or of an interest in land or revenue—according to the amount for which the land or interest was attached :

to set
aside an
attach-
ment ;

Provided that, where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest :

(ix) In suits against a mortgagee for the recovery of the property mortgaged,

to redeem ;

and in suits by a mortgagee to foreclose the mortgage,

to fore-
close ;

or, where the mortgage is made by conditional sale, to have the sale declared absolute—

according to the principal money expressed to be secured by the instrument of mortgage :

(x) In suits for specific performance—

for specific
perform-
ance ;

(a) of a contract of sale—according to the amount of the consideration :

(b) of a contract of mortgage—according to the amount agreed to be secured :

(c) of a contract of lease—according to the aggregate amount of the fine or premium (if any) and of the rent agreed to be paid during the first year of the term :

(d) of an award—according to the amount or value of the property in dispute :

(xi) In the following suits between landlord and tenant :—

between
landlord
and
tenant.

(a) for the delivery by a tenant of the counterpart of a lease,

(b) to enhance the rent of a tenant having a right of occupancy,

(c) for the delivery by a landlord of a lease,

¹(cc) for the recovery of immoveable property from a tenant including a tenant holding over after the determination of a tenancy,

(d) to contest a notice of ejectment,

¹Clause (cc) was inserted by sec. 2(1) of the Court-fees (Amendment) Act, 1905 (VI of 1905).

[Act VII

(Chapter III.—Computation of Fees.—Sections 8—8B.)

(e) to recover the occupancy of ¹[immoveable property] from which a tenant has been illegally ejected by the landlord, and

(f) for abatement of rent—

according to the amount of the rent of the ¹[immoveable property] to which the suit refers, payable for the year next before the date of presenting the plaint.

Fee on memorandum of appeal against order relating to compensation.

8. The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes, shall be computed according to the difference between the amount awarded and the amount claimed by the appellant

Statement of particulars of subject-matter of suits and plaintiff's valuation thereof.

²8A. In every suit in which an *ad valorem* court-fee is payable under this Act on the plaint, the plaintiff shall file with the plaint a statement of particulars of the subject-matter of the suit and his own valuation thereof unless such particulars and the valuation are contained in the plaint. The statement shall be in such form and shall contain such particulars as may be prescribed by the ³[State Government] by notification in the ⁴[Official Gazette]. In every such suit the plaintiff shall also, if the Court so directs, file a duplicate copy of the plaint and of the said statement.

Procedure where insufficient court-fee is filed on plaint or memorandum of appeal.

²8B. (1) In every suit in which a court-fee is payable under this Act on the plaint or memorandum of appeal the Court shall, ⁵[on the date fixed for the appearance of the opposite party or as soon as may be thereafter], and in every case before proceeding to deliver judgment, record a finding whether a sufficient court-fee has been paid.

(2) If the Court records a finding that an insufficient Court-fee has been paid on the plaint or memorandum of appeal the Court shall—

(a) stay all further proceedings in the suit until it has determined the proper amount of such court-fee payable

¹These words were substituted for the word "land" by sec. 2(2) of the Court-fees (Amendment) Act, 1905 (VI of 1905.)

²Sections 8A, 8B, 8C, 8D, 8E and 8F were inserted by sec. 8 of the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act VII of 1935).

³The words "Provincial Government" were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was subsequently substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁴These words were substituted for the words "*Calcutta Gazette*" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵These words were substituted for the words "as soon as may be after the registration of the plaint or memorandum of appeal" by sec. 3 of the Court-fees (Bengal Third Amendment) Act, 1935 (Ben. Act I of 1936).

of 1870.]

(Chapter III.—Computation of Fees.—Sections 8C—8E.)

and the plaintiff or the appellant, as the case may be, has paid such amount or until the date referred to in clause (b), as the case may be :

Provided that if the plaintiff or appellant gives, within such time as the Court may allow, security, to the satisfaction of the Court, for the payment of any additional amount for which he may be found liable the Court may proceed with the suit,

(b) fix a date before which the plaintiff or appellant shall pay the amount of court-fee due from him, as determined by the Court under clause (a).

(3) If the plaintiff or appellant fails to give the security referred to in clause (a) of sub-section (2) or to pay the amount referred to in clause (b) of that sub-section within the time allowed, or before the date fixed, by the Court, as the case may be, the suit shall be dismissed.

¹8C. If the Court is of opinion that the subject-matter of any suit has been wrongly valued it may revise the valuation and determine the correct valuation and may hold such inquiry as it thinks fit for such purpose.

Inquiry as to valuation of suits.

¹8D. (1) For the purpose of an inquiry under section 8C the Court may depute, or issue a commission to, any suitable person to make such local or other investigation as may be necessary and to report thereon to the Court. Such report and any evidence recorded by such person shall be evidence in the inquiry.

Investigation to ascertain proper valuation.

(2) The Court may, from time to time, direct such party to the suit as it thinks fit to deposit such sum as the Court thinks reasonable as the costs of the inquiry, and if the costs are not deposited within such time as the Court shall fix, may, notwithstanding anything contained in any other Act, dismiss the suit if such party is the plaintiff or the appellant and, in any other case, may recover the costs as a public demand.

¹8E. (1) The Court, when making an inquiry under section 8C and any person making an investigation under section 8D shall have, respectively, for the purposes of such inquiry or investigation, the powers vested in a Court under the Code of Civil Procedure, 1908, in respect of the following matters, namely :—

Power of persons making inquiry under sections 8C and 8D.

- (a) enforcing the attendance of any person and examining him on oath or affirmation ;
- (b) compelling the production of documents or material objects ; and
- (c) issuing commissions for the examination of witnesses.

(2) An inquiry or investigation referred to in sub-section (1) shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code.

Act V of 1908.

Act XLV of 1860.

¹See foot-note 1 on page 416, ante.

(Chapter III.—Computation of Fees.—Sections 8F—12).

Costs of inquiry as to valuation and refund of excess fee.

¹8F. If in the result of an inquiry under section 8C the Court finds that the subject-matter of the suit has been undervalued the Court may order the party responsible for the undervaluation to pay all or any part of the costs of the inquiry.

If in the result of such inquiry the Court finds that the subject-matter of the suit has not been undervalued the Court may, in its discretion, order that all or any part of such costs shall be paid ²[by the State Government] or by any party to the suit at whose instance the inquiry has been undertaken, and if any amount exceeding the proper amount of fee has been paid shall refund the excess amount so paid.

9. [Power to ascertain nett profits or market-value.]—Rep. by sec. 9 of the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act VII of 1935).

10. [Procedure where nett profits or market-value wrongly estimated.]—Rep. by sec. 9 of the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act VII of 1935).

Procedure in suits for mesne profits or account when amount found due exceeds amount claimed.

³11. Where, in any suit for mesne profits or for land and mesne profits or for an account, the fee which would have been payable if the suit had comprised the whole of the relief to which the Court finds the plaintiff to be entitled exceeds the fee actually paid, the Court shall require the plaintiff to pay an additional fee equal to the amount of the excess, and if such additional fee is not paid within such time as the Court may fix, the suit, or if a decree has previously been passed therein, so much of the claim as has not been so decreed, shall be dismissed :

Provided that, where the additional fee is payable in respect of a portion of the claim which can be relinquished, that portion only shall be dismissed.

Decision of questions as to valuation.

12. (i) Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this chapter on a plaint or memorandum of appeal shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit.

(ii) But whenever any such suit comes before a Court of Appeal, reference or revision, if such Court considers that the said question has been wrongly decided, to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided, ⁴[and thereafter :—

¹See foot-note 1 on page 416, ante.

²The words "by the Provincial Government" were substituted for the words "by Government" by para. 3 and Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was subsequently substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws order, 1950.

³Section 11 was substituted for the original section by sec. 10 of the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act VII of 1935).

⁴These words were substituted for the words "and the provisions of section 10, paragraph (ii) shall apply" by sec. 11, *ibid.*

of 1870.]

(Chapter III.—Computation of Fees.—Sections 12A—13.)

- (a) if the party required to pay is the appellant or petitioner, the provisions of sub-sections (2) and (3) of section 8B shall, so far as may be, apply ;
- (b) if the party required to pay is the respondent or the opposite party, the provisions of sub-section (2) of section 8B shall, so far as may be, apply, and, if such party fails to pay the fee required before the date fixed by the Court, the Court shall recover the amount of such fee from him as a public demand ;

Explanation.—For the purposes of this section a question relating to the classification of any suit for the purpose of section 7 shall not be deemed to be a question relating to valuation.]

12A. (1) The High Court shall, when dealing with an application for leave to appeal to the Supreme Court, make an order for the payment of any deficit court-fee with such interest not exceeding six *per centum per annum* as the High Court may direct, in all cases where the High Court finds that the subject-matter of the suit or appeal had been under-valued either in the court of first instance or in the court of appeal or in both, irrespective of whether the certificate of fitness for appeal to the Supreme Court is or is not granted.

Recovery
of deficit
court-fee in
certain
cases.

(2) The fee together with interest thereon found to be payable under sub-section (1) shall be paid by the party ordered to do so and if such party fails to pay the amount required before the date fixed by the High Court, it shall be recoverable from him as a public demand.

13. If an appeal or plaint, which has been rejected by the lower Court on any of the grounds mentioned in the ²Code of Civil Procedure, is ordered to be received, or if a suit is remanded in appeal, on any of the grounds mentioned in section 351³ of the same Code for a second decision by the lower Court, the Appellate Court shall grant to the appellant a certificate, authorizing him to receive back from the Collector the full amount of fee paid on the memorandum of appeal :

Refund of
fee paid on
memoran-
dum of
appeal.

¹This section was inserted by section 4 of the Court-fees (West Bengal Amendment) Act, 1959 (West Ben. Act XXIII of 1959.)

²See now the Code of Civil Procedure, 1908 (Act V of 1908).

³This reference to the Code of Civil Procedure, Act VIII of 1859, should now be read as applying to the corresponding provision of Act V of 1908, i. e., Order XLI, rule 23 of the First Schedule.

[Act VII

(Chapter III.—Computation of Fees.—Sections 14—17.)

Provided that if, in the case of a remand in appeal, the order of remand shall not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorize the appellant to receive back more than so much fee as would have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded.

Refund
fee on
application
for review
of judg-
ment.

14. Where an ¹application for a review of judgment is presented on or after the ninetieth day from the date of the decree, the Court, unless the delay was caused by the applicant's laches, may, in its discretion, grant him a certificate authorizing him to receive back from the Collector so much of the fee paid on the application as exceeds the fee which would have been payable had it been presented before² such day.

Refund
where
Court
reverses or
modifies its
former
decision
on ground
of mistake.

15. Where an application for a review of judgment is admitted, and where, on the rehearing, the Court reverses or modifies its former decision on the ground of mistake in law or fact, the applicant shall be entitled to a certificate from the Court authorizing him to receive back from the Collector so much of the fee paid on the ³[application] as exceeds the fee payable on any other application to such Court under the Second Schedule to this Act, No. 1, clause (b) or clause (d).

But nothing in the former part of this section shall entitle the applicant to such certificate where the reversal or modification is due, wholly or in part, to fresh evidence which might have been produced at the original hearing.

16. [Additional fee where respondent takes objection to unappealed part of decree.]—Rep. by Act V of 1908, sec. 156 and Schedule V.

Multi-
farious
suits.

⁴17. (1) In any suit in which two or more separate and distinct causes of action are joined and separate and distinct reliefs are sought in respect of each, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees with which the plaints or memoranda of appeal would be chargeable under this Act in separate suits instituted in respect of each such cause of action :

Provided that nothing in this sub-section shall be deemed to affect any power conferred by or under the Code of Civil Procedure, 1908, to order separate trials.

Act V of
1908.

¹As to application for review of judgment, see the Code of Civil Procedure, 1908 (Act V of 1908), sec. 114 and Order XLVII of the First Schedule.

²See items 4 and 5 in Schedule I of this Act.

³This word was substituted for the words "plaint or memorandum of appeal," by sec. I of the Court-fees (Amendment) Act, 1870 (XX of 1870).

⁴Section 17 was substituted for the original section by sec. 12 of the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act VII of 1935).

of 1870.]

(Chapter III.—Computation of Fees.—Sections 18, 19.)

(2) Where more reliefs than one based on the same cause of action are sought either jointly or in the alternative, the fee shall be paid according to the value of the relief in respect of which the largest fee is payable.

18. When the first or only examination of a person who complains of the offence of wrongful confinement, or of wrongful restraint, or of any offence other than an offence for which police-officers may arrest without a warrant, and who has not already presented a petition on which a fee has been levied under this Act, is reduced to writing under the provisions of the Code of Criminal Procedure, the complainant shall pay ²[a fee of one rupee] unless the Court thinks fit to remit such payment].

Written examinations of complainants.

19. Nothing contained in this Act shall render the following documents chargeable with any fee :—

Exemption of certain documents.

- (i) Power-of-attorney ³[or other written authority] to institute or defend a suit when executed ⁴[by a member of any of the Armed Forces of the Union] not in civil employment.
- (ii) [Rep. by the Amending Act, 1891 (XII of 1891), sec. 2 and Schedule I.]
- (iii) Written statements called for by the Court after the first hearing of a suit.
- (iv) [Rep. by the Cantonments Act, 1889 (XIII of 1889), sec. 2 and Schedule.]
- (v) Plaints in suits tried by Village Munsifs in the Presidency of Fort St. George.
- (vi) Plaints and processes in suits before District Panchayats in the same Presidency.
- (vii) Plaints in suits before Collectors under Madras Regulation XII of 1816.
- (viii) Probate of a will, letters of administration, ⁵[and, save as regards debts and securities, a certificate under Bombay Regulation VIII of 1827], where the amount

¹This reference should now be read as referring to the Code of Criminal Procedure, 1898 (Act V of 1898)—see sec. 3 of that Act.

²These words were substituted for the words “a fee of eight annas” by sec. 3 of the Bengal Court-fees (Amendment) Act, 1922 (Ben. Act IV of 1922).

³These words were inserted by sec. 13 (a) of the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act VII of 1935.)

⁴Substituted by para. 3 and the First Schedule of the Adaptation of Laws Order, 1950, for the words “by an Officer, Warrant Officer, non-commissioned Officer or private of Her Majesty’s Army”.

⁵These words were substituted for the words and figure “and certificate mentioned in the First Schedule to this Act Annexed No. 12,” by sec. 13(2). of the Succession Certificate Act, 1889 (VII of 1889).

[Act VII

(Chapter III.—Computation of Fees.—Section 19.)

or value of the property in respect of which the probate or letters or certificate shall be granted does not exceed '[two thousand rupees].

- (ix) Application or petition to a Collector or other officer making a settlement of land-revenue, or to a Board of Revenue, or a Commissioner of Revenue, relating to matters connected with the assessment of land or the ascertainment of rights thereto or interests therein, if presented previous to the final confirmation of such settlement.
- (x) Application relating to a supply for irrigation of water belonging to Government.
- (xi) Application for leave to extend cultivation, or to relinquish land, when presented to an officer of land-revenue by a person holding, under direct engagement with Government, land of which the revenue is settled, but not permanently.
- (xii) Application for service of notice of relinquishment of land or of enhancement of rent.
- (xiii) Written authority to an agent to distrain.
- (xiv) First application (other than a petition containing a criminal charge or information) for the summons of a witness or other person to attend either to give evidence or to produce a document, or in respect of the production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in Court.
- (xv) Bail bonds in criminal cases, recognizances to prosecute or give evidence, and recognizances for personal appearance or otherwise.
- (xvi) Petition, application, charge or information respecting any offence, when presented, made or laid to or before a Police-Officer, or to or before the ²Heads of Villages or the ³Village Police in the territories respectively subject to the ⁴[State Governments] of Madras and Bombay.
- (xvii) Petition by a prisoner, or other person in duress or under restraint of any Court or its officers.

¹These words were substituted for the words "one thousand rupees" by sec. 4 of the Bengal Court-fees (Amendment) Act, 1922 (Ben. Act IV of 1922).

²See Madras Regulations XI of 1816 and IV of 1821, section 6.

³See the Bombay village Police Act, 1867 (Bom. Act VIII of 1867), secs. 14—16.

⁴The words "Provincial Governments" were substituted for the words "Governors in Council" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "States" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

of 1870.]

(Chapter III.—Computation of Fees.—Chapter IIIA.—Probates, Letters of Administration and Certificates of Administration.—Section 19A.)

- (xviii) Complaint of a public servant (as defined in the Indian Penal Code), a municipal officer, or an officer or servant of a Railway Company.
- (xix) Application for permission to cut timber in Government forests, or otherwise relating to such forests.
- (xx) Application for the payment of money due by Government to the applicant.
- (xxi) Petition of appeal against the chaukidari assessment under ¹Act No. XX of 1856, or against any municipal tax.
- (xxii) Applications for compensation under any law for the time being in force relating to the acquisition of property for public purposes.
- (xxiii) Petitions presented to the Special Commissioner appointed under ²Bengal Act No. II of 1869 (to ascertain, regulate, and record certain tenures in Chota Nagpur).
- ³(xxiv) Petitions under the Indian Christian Marriage Act, 1872, sections 45 and 48.
- ⁴(xxv) Petitions of appeal ⁵[by servants of the Government or] Court of Wards against orders of dismissal, reduction or suspension; copies of such orders filed with such appeals, and applications for obtaining such copies.

Act XLV
of 1860.

XV of
1872.

CHAPTER IIIA.

PROBATES, LETTERS OF ADMINISTRATION AND CERTIFICATES OF ADMINISTRATION.

Relief
where too
high a
court-fee
has been
paid.

19A. Where any person on applying for the probate of a will or letters of administration has estimated the property of the deceased to be of greater value than the same has afterwards proved to be, and has consequently paid too high a court-fee thereon,

¹The Bengal Chaukidari Act, 1856.

²The Chota Nagpur Tenures Act, 1869.

³Paragraph xxiv was substituted for the original clause by sec. 2 of the Indian Christian Marriage Act, 1872 (XV of 1872).

⁴Paragraph xxv was added by sec. 13(b) of the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act VIII of 1935).

⁵The words "by servants of the Crown or" were substituted for the words "by Government servants or servants of" by para. 3 and Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "Government" was subsequently substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁶Chapter IIIA was inserted by sec. 6 of the Probate and Administration Act, 1875 (XIII of 1875).

[Act VII]

(Chapter IIIA.—Probates, Letters of Administration and Certificates of Administration.—Sections 19B, 19C.)

if, within six months after the true value of the property has been ascertained, such person produces the probate or letters to the Chief Controlling Revenue-authority ¹[for the local area] in which the probate or letters has or have been granted,

and delivers to such Authority a particular inventory and valuation of the property of the deceased, verified by affidavit or affirmation,

and if such authority is satisfied that a greater fee was paid on the probate or letters than the law required,

the said Authority may—

- (a) cancel the stamp on the probate or letters, if such stamp has not been already cancelled ;
- (b) substitute another stamp for denoting the court-fee which should have been paid thereon ; and
- (c) make an allowance for the difference between them as in the case of spoiled stamps, or repay the same in money, at his discretion.

19B. Whenever it is proved to the satisfaction of such Authority that an executor or administrator has paid debts due from the deceased to such an amount as, being deducted out of the amount or value of the estate, reduces the same to a sum which, if it had been the whole gross amount or value of the estate, would have occasioned a less court-fee to be paid on the probate or letters of administration granted in respect of such estate than has been actually paid thereon under this Act,

such Authority may return the difference, provided the same be claimed within three years after the date of such probate or letters.

But when, by reason of any legal proceeding, the debts due from the deceased have not been ascertained and paid, or his effects have not been recovered and made available, and in consequence thereof the executor or administrator is prevented from claiming the return of such difference within the said term of three years, the said Authority may allow such further time for making the claim as may appear to be reasonable under the circumstances.

19C. Whenever ²* a grant of probate or letters of administration has been or is made in respect of the whole of the property belonging to an estate, and the full fee chargeable under this Act has been or is paid thereon, no fee shall be chargeable under the same Act when a like grant is made in respect of the whole or any part of the same property belonging to the same estate.

¹These words were substituted for the words "of the Province" by sec. 3(1) of the Court-fees (Amendment) Act, 1901 (X of 1901).

²The word "such" which was repealed by sec. 2 and Schedule I of the Amending Act, 1891 (XII of 1891), is omitted.

Relief where debts due from a deceased person have been paid out of his estate.

Relief in case of several grants.

of 1870.]

(Chapter IIIA.—Probates, Letters of Administration and Certificates of Administration.—Sections 19D, 19E.)

Whenever such a grant has been or is made in respect of any property forming part of an estate, the amount of fees then actually paid under this Act shall be deducted when a like grant is made in respect of property belonging to the same estate, identical with or including the property to which the former grant relates.

19D. The probate of the will, or the letters of administration of the effects, of any person deceased heretofore or hereafter granted shall be deemed valid and available by his executors or administrators for recovering, transferring or assigning any moveable or immoveable property whereof or whereto the deceased was possessed or entitled, either wholly or partially as a trustee, notwithstanding the amount or value of such property is not included in the amount or value of the estate in respect of which a court-fee was paid on such probate or letters of administration.

Probates declared valid as to property though not covered by court-fee.

19E. Where any person on applying for probate or letters of administration has estimated the estate of the deceased to be of less value than the same has afterwards proved to be, and has in consequence paid too low a court-fee thereon, the Chief Controlling Revenue-authority ¹[for the local area] in which the probate or letters has or have been granted may, on the value of the estate of the deceased being verified by affidavit or affirmation, cause the probate or letters of administration to be duly stamped on payment of the full court-fee which ought to have been originally paid thereon in respect of such value and of the further penalty, if the probate or letters is or are produced within one year from the date of the grant, of five times, or, if it or they is or are produced after one year from such date, of twenty times, such proper court-fee, without any deduction of the court-fee originally paid on such probate or letters :

Provision for case where too low a court-fee has been paid on probates, etc.

Provided that, if the application be made within six months after the ascertainment of the true value of the estate and the discovery that too low a court-fee was at first paid on the probate or letters, and if the said Authority is satisfied that such fee was paid in consequence of a mistake or of its not being known at the time that some particular part of the estate belonged to the deceased, and without any intention of fraud or to delay the payment of the proper court-fee, the said Authority may remit the said penalty, and cause the probate or letters to be duly stamped on payment only of the sum wanting to make up the fee which should have been at first paid thereon.

¹These words were substituted for the words "of the Province" by sec. 3 (1) of the Court-fees (Amendment) Act, 1901 (X of 1901).

[Act VII

(Chapter IIIA.—Probates, Letters of Administration and Certificates of Administration.—Sections 19F—19H.)

Adminis-
trator to
give
proper
security
before
letters
stamped
under
section
19E.

19F. In case of letters of administration on which too low a court-fee has been paid at first, the said Authority shall not cause the same to be duly stamped in manner aforesaid until the administrator has given such security to the Court by which the letters of administration have been granted as ought by law to have been given on the granting thereof in case the full value of the estate of the deceased has been then ascertained.

Executors,
etc., not
paying full
court-fee
on pro-
bates,
etc.,
within six
months
after
discovery
of under-
payment.

19G. Where too low a court-fee has been paid on any probate or letters of administration in consequence of any mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator acting under such probate or letters does not, within six months ¹ * * * * after the discovery of the mistake or of any effects not known at the time to have belonged to the deceased, apply to the said Authority and pay what is wanting to make up the court-fee which ought to have been paid at first on such probate or letters, he shall forfeit the sum of one thousand rupees and also a further sum at the rate of ten rupees *per cent.* on the amount of the sum wanting to make up the proper court-fee.

Notice of
applica-
tions for
probate or
letters of
adminis-
tration
to be given
to
Revenue-
authoritie
and
procedures,
thereon.

19H. (1) Where an application for probate or letters of administration is made to any Court other than a High Court, the Court shall cause notice of the application to be given to the Collector.

(2) Where such an application as aforesaid is made to a High Court, the High Court shall cause notice of the application to be given to the Chief Controlling Revenue-authority ²[for the local area in which the High Court is situated].

(3) The Collector within the local limits of whose revenue-jurisdiction the property of the deceased or any part thereof is, may at any time inspect or cause to be inspected, and take or cause to be taken copies of, the record of any case in which application for probate or letters of administration has been made; and if, on such inspection or otherwise, he is of opinion that the petitioner has under-estimated the value of the property of the deceased, the Collector may, if he thinks fit, require the attendance of the petitioner (either in person or by agent) and take evidence and inquire into the matter in such manner as he may think fit, and, if he is still of opinion that the value of the property has been under-estimated, may require the petitioner to amend the valuation.

¹ The words and figure "after the first day of April, 1874 or" were repealed by sec. 2 and Schedule I of the Amending Act, 1891 (XII of 1891).

² Sections 19H, 19-I, 19J and 19K were inserted by sec. 2 of the Court-fees (Amendment) Act, 1899 (XI of 1899).

³ These words were substituted for the words "of the Province" by sec. 3(2) of the Court-fees (Amendment) Act, 1901 (X of 1901).

of 1870.]

(Chapter IIIA.—*Probates, Letters of Administration and Certificates of Administration.*—Section 19-I.)

(4) If the petitioner does not amend the valuation to the satisfaction of the Collector, the Collector may move the Court before which the application for probate or letters of administration was made, to hold an inquiry into the true value of the property :

Provided that no such motion shall be made after the expiration of six months from the date of the exhibition of the inventory required by section 277 of the Indian Succession Act, 1865¹, or, as the case may be, by section 98 of the Probate and Administration Act, 1881¹.

X of 1865.
V of 1881.

(5) The Court, when so moved as aforesaid, shall hold, or cause to be held, an inquiry accordingly, and shall record a finding as to the true value, as near as may be, at which the property of the deceased should have been estimated. The Collector shall be deemed to be a party to the inquiry.

(6) For the purposes of any such inquiry, the Court or person authorized by the Court to hold the inquiry may examine the petitioner for probate or letters of administration on oath (whether in person or by commission), and may take such further evidence as may be produced to prove the true value of the property. The person authorized as aforesaid to hold the inquiry shall return to the Court the evidence taken by him and report the result of the inquiry, and such report and the evidence so taken shall be evidence in the proceeding, and the Court may record a finding in accordance with the report, unless it is satisfied that it is erroneous.

(7) The finding of the Court recorded under sub-section (5) shall be final, but shall not bar the entertainment and disposal by the Chief Controlling Revenue-authority of any application under section 19E.

(8) The ²[State Government] may make rules for the guidance of Collectors in the exercise of the powers conferred by sub-section (3).

§19-1. (1) No order entitling the petitioner to the grant of probate or letters of administration shall be made upon an application for such grant until the petitioner has filed in the Court a valuation of the property in the form set forth in the Third Schedule, and the Court is satisfied that the fee mentioned in No. 11 of the First Schedule has been paid on such valuation.

Payment
of court-
fees in
respect of
probates
and letters
of admini-
stration.

(2) The grant of probate or letters of administration shall not be delayed by reason of any motion made by the Collector under section 19H, sub-section (4).

¹ See now, the Indian Succession Act, 1925 (XXXIX of 1925).

² See foot-note 3, on p. 416, *ante*.

³ See foot-note 2, on page 426, *ante*.

[Act VII

(Chapter IIIA.—Probates, Letters of Administration and Certificates of Administration.—Chapter IV.—Process-fees.—Sections 19J,—20i.)

Recovery
of
penalties,
etc.

¹19J. (1) Any excess fee found to be payable on an inquiry held under section 19H, sub-section (6), and any penalty or forfeiture under section 19G, may, on the certificate of the Chief Controlling Revenue-authority, be recovered from the executor or administrator as if it were an arrear of land-revenue by any Collector * * *.

(2) The Chief Controlling Revenue-authority may remit the whole or any part of any such penalty or forfeiture as aforesaid, or any part of any penalty under section 19E or of any court-fee under section 19E in excess of the full court-fee which ought to have been paid.

Sections 6
and 28 not
to apply to
probates
or letters
of admin-
istration.

¹19K. Nothing in section 6 or section 28 shall apply to probates or letters of administration.

CHAPTER IV.

PROCESS-FEES.

Rules as to
costs of
processes.

20. The High Court shall, as soon as may be, make rules as to the following matters :—

(i) The fees chargeable for serving and executing processes issued by such Court in its appellate jurisdiction, and by the other Civil and Revenue Courts established within the local limits of such jurisdiction ;

(ii) the fees chargeable for serving and executing processes issued by the Criminal Courts established within such limits in the case of offences other than offences for which police-officers may arrest without a warrant ; and

(iii) the remuneration of the peons and all other persons employed by leave of a Court in the service or execution of processes.

The High Court may from time to time alter and add to the rules so made.

Confirma-
tion and
publication
of rules.

All such rules, alterations and additions shall, after being confirmed by the ³[State Government] ⁴* * * * be published in the ⁵[Official Gazette], and shall thereupon have the force of law.

¹ See foot-note 2 on page 426, ante.

² The words "in any part of British India" were omitted by the Schedule of the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948.

³ See foot-note 3 on page 416, ante.

⁴ The words "and sanctioned by the Governor-General of India in Council" were omitted by sec. 2 and the First Schedule, Part 1, of the Devolution Act, 1920 (XXXVIII of 1920).

⁵ These words were substituted for the words "local official Gazette" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1870.]

(Chapter IV.—Process-fees.—Chapter V.—Of the Mode of Levying Fees.—Sections 21—25.)

Until such rules shall be so made and published, the fees now leviable for serving and executing processes shall continue to be levied, and shall be deemed to be fees leviable under this Act.

21. A table in the English and Vernacular languages, showing the fees chargeable for such service and execution, shall be exposed to view in a conspicuous part of each Court.

Tables of process fees.

22. Subject to rules to be made by the High Court and approved by the ¹[State Government] ²* * * *,

Number of peons in District and subordinate Courts.

every District Judge and every Magistrate of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court and each of the Courts subordinate thereto,

and for the purposes of this section, every Court of Small Causes established under Act No. XI of 1865³ (to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature) shall be deemed to be subordinate to the Court of the District Judge.

Number of peons in Mofussil Small Cause Courts.

23. Subject to rules to be framed by the Chief Controlling Revenue-authority and approved by the ¹[State Government] ²* * * every officer performing the functions of a Collector of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court or the Courts subordinate to him.

Number of peons in Revenue Courts.

24. [Process served under this Chapter to be held to be process within meaning of Code of Civil Procedure.]—Rep. by the Amending Act, 1891 (XII of 1891), sec. 2 and Schedule I.

CHAPTER V.

OF THE MODE OF LEVYING FEES.

25. All fees referred to in section 3 or chargeable under this Act shall be collected by stamps.

Collection of fees by stamps.

¹See foot-note 3 on page 416, ante.

²The words "and the Governor-General of India in Council" were omitted by sec. 2 and the 1st Sch., Part 1, of the Devolution Act, 1920 (XXXVIII of 1920).

³The reference to Act XI of 1865 should now be read as referring to the Provincial Small Cause Courts Act, 1887 (IX of 1887), see sec. 2(3) of that Act.

(Chapter V.—Of the Mode of Levying Fees.—Sections 26—30.)

Stamps to be impressed or adhesive.

26. The stamps used to denote any fees chargeable under this Act shall be impressed, or adhesive, or partly impressed and partly adhesive, as the ¹[Appropriate Government] may, by notification in the ²[Official Gazette] from time to time direct.

Rules for supply, number, renewal and keeping accounts of stamps.

27. The ¹[Appropriate Government] may, from time to time, make rules for regulating—

- (a) the supply of stamps to be used under this Act;
- (b) the number of stamps to be used for denoting any fee chargeable under this Act;
- (c) the renewal of damaged or spoiled stamps; and
- (d) the keeping accounts of all stamps used under this Act :

Provided that, in the case of stamps used under section 3 in a High Court, such rules shall be made with the concurrence of the Chief Justice of such Court.

All such rules shall be published in the ³[Official Gazette], and shall thereupon have the force of law.

Stamping documents inadvertently received.

28. No document which ought to bear a stamp under this Act shall be of any validity, unless and until it is properly stamped.

But, if any such document is through mistake or inadvertence received, filed or used in any Court or office without being properly stamped, the presiding Judge or the head of the office, as the case may be, or, in the case of a High Court, any Judge of such Court, may, if he thinks fit, order that such document be stamped as he may direct ; and on such document being stamped accordingly, the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance.

Amended document.

29. Where any such document is amended in order merely to correct a mistake and to make it conform to the original intention of the parties, it shall not be necessary to impose a fresh stamp.

Cancellation of stamp.

30. No document requiring a stamp under this Act shall be filed or acted upon in any proceeding in any Court or office until the stamp has been cancelled.

Such officer as the Court or the head of the office may from time to time appoint shall, on receiving any such document, forthwith effect such cancellation by punching out the figure-head so as to leave the amount designated on the stamp untouched, and the part removed by punching shall be burnt or otherwise destroyed.

¹ These words were substituted for the words "Local Government" by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

² See foot-note 5, on page 428, ante.

of 1870.]

(Chapter VI.—Miscellaneous.—Sections 31—35.)

CHAPTER VI.

MISCELLANEOUS.

31. [*Repayment of fees paid on applications to Criminal Courts.*—Rep. by s. 163 of the Code of Criminal Procedure (Amendment) Act, 1923 (XVIII of 1923).

32. [*Amendments of Act VIII of 1859 and Act IX of 1869.*—Rep. by sec. 2 and Schedule I of the Amending Act, 1891 (XII of 1891).

33. Whenever the filing or exhibition in a Criminal Court of a document in respect of which the proper fee has not been paid is, in the opinion of the presiding Judge, necessary to prevent a failure of justice, nothing contained in section 4 or section 6 shall be deemed to prohibit such filing or exhibition.

Admission in criminal cases of documents for which proper fee has not been paid.

¹34 (1) The ²[Appropriate Government] may from time to time make rules for regulating ³[the sale of, and the particulars to be entered at the time of sale on, stamps] to be used under this Act, the persons by whom alone such sale is to be conducted, and the duties and remuneration of such persons.

Sale of stamps.

(2) All such rules shall be published in the ⁴[*Official Gazette*] and shall thereupon have the force of law.

(3) Any person appointed to sell stamps who disobeys any rule made under this section, and any person not so appointed who sells or offers for sale any stamp, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

⁵34A. Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Act, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.

Enlargement of time.

⁶35. (1) The ²[Appropriate Government] may, from time to time subject to such conditions or restrictions as it may think fit to impose, by notification in the ⁴[*Official Gazette*], suspend the

Power to suspend, reduce or remit fees.

¹This section was substituted for the original section by sec. 2 and Schedule II of the Amending Act, 1891 (XII of 1891).

²See foot-note 1 on page 430, ante.

³These words were substituted for the words "the sale of stamps" by section 5 of the Court-fees (West Bengal Amendment) Act, 1959 (West Ben. Act XXIII of 1959).

⁴These words were substituted for the words "*Calcutta Gazette*" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵Section 34A was inserted by sec. 14 of the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act VII of 1935).

⁶Section 35 was substituted for the original section by sec. 15, *ibid*.

(Chapter VI—Miscellaneous.—Section 36.)

payment of or reduce or remit, in the whole of ¹[West Bengal] or in any part thereof, all or any of the fees mentioned in the First and Second Schedules to this Act annexed and may in like manner cancel or vary such order.

(2) The ²[Appropriate Government] may, from time to time by rules, prescribe the manner in which any fee the payment of which is suspended under sub-section (1) may be realised and for this purpose direct that such fee may be recovered as a public demand.

Saving of
fees to
certain
officers of
High
Courts.

36. Nothing in Chapters II and V of this Act applies to the commission payable to the Accountant-General of the High Court at Fort William, or to the fees which any officer of a High Court is allowed to receive in addition to a fixed salary.

¹Substituted for the word "Bengal" by para. 3 (2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

²See foot-note 1 on p. 430, *ante*.

of 1870.]

(Schedule 1.)

SCHEDULE 1.

Ad valorem fees.

Number.		Proper Fee.
11. ¹ Plaint written statement ² pleading ³ a set-off or counter-claim or memorandum of appeal (not otherwise provided for in this Act) or of cross-objection presented to any Civil or Revenue Court except those mentioned in section 3.	When the amount or value of the subject-matter in dispute does not exceed seventy-five rupees, for every five rupees, or part thereof of such amount ³ [or value],	six annas.
	and	
	when such amount or value exceeds seventy-five rupees for every five rupees or part thereof, in excess of seventy-five rupees, up to one hundred rupees,	Eight annas.
	and	
	when such amount or value exceeds one hundred rupees, for every ten rupees, or part thereof, in excess of one hundred rupees, up to one hundred and fifty rupees,	One rupee ten annas.
	⁴ []	
	when such amount or value exceeds one hundred and fifty rupees, for every ten rupees, or part thereof, up to one thousand rupees,	One rupee two annas.
	and	

¹This article was substituted for the original article by sec. 5 of the Bengal Court-fees (Amendment) Act, 1922 (Ben. Act IV of 1922).

²To ascertain the proper fee leviable on the institution of a suit, see the table annexed to this Schedule.

³The commas before and after the word "pleading" which were repealed by the Bengal Court-fees (Amendment No. II) Act, 1922 (Ben. Act VI of 1922), are omitted.

⁴The words "or value" were substituted for the words "in value" by sec. 2, *ibid.*

⁵The word "and" was repealed by sec. 2, *ibid.*

(Schedule 1.)

SCHEDULE I—*contd.**Ad valorem fees—contd.*

Number.		Proper Fee.
11. †Plaint, etc.— <i>contd.</i>	when such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees, up to seven thousand five hundred rupees,	Seven rupees eight annas.
	and	
	when such amount or value exceeds seven thousand five hundred rupees, for every two hundred and fifty rupees, or part thereof, in excess of seven thousand five hundred rupees, up to ten thousand rupees,	Fifteen rupees.
	and	
	when such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees,	Twenty-two rupees eight annas.
	and	
	when such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to fifty thousand rupees,	Thirty rupees.
	and	

* See foot-note 1 on page 433, *ante*.

† To ascertain the proper fee leviable on the institution of a suit, see the table annexed to this Schedule.

of 1870.]

(Schedule I.)

SCHEDULE I.—*contd.*

Ad valorem fees.—*contd.*

Number.		Proper Fee.
11. †Plaint, etc.— <i>concl'd.</i>	when such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees : Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be ten thousand rupees.	Thirty-seven rupees eight annas.
2. 2 * * *		
3. 3 * * *		
4. Application for review of judgment, if presented on or after the ninetieth day from the date of the decree.	...	The fee leviable on the plaint or memorandum of appeal.
5. Application for review of judgment, if presented before the ninetieth day from the date of the decree.	...	One half of the fee leviable on the plaint or memorandum of appeal.

¹See foot-note 1 on page 433, *ante*.

[†]To ascertain the proper fee leviable on the institution of a suit, see the table annexed to this Schedule.

²Article 2 was omitted by sec. 4 of the Court-fees (West Bengal Amendment) Act, 1963 (West Ben. Act XVIII of 1963).

³Article 3 was repealed by sec. 2 and Sch. I of Act VIII of 1871.

(Schedule I.)

SCHEDULE I.—*contd.**Ad valorem fees.—contd.*

Number.		Proper Fee.
6. Copy or translation of a judgment or order not being, or having the force of, a decree.	<p>When such judgment or order is passed by any Civil Court other than a High Court, or by the presiding officer of any Revenue Court or Office, or by any other Judicial or Executive Authority—</p> <p>(a).—If the amount or value of the subject-matter is fifty or less than fifty rupees.</p> <p>(b).—If such amount or value exceeds fifty rupees.</p> <p>When such judgment or order is passed by a High Court.</p>	<p>¹[Six annas.]</p> <p>¹[Twelve annas.]</p> <p>¹[One rupee eight annas.]</p>
7. Copy of a decree or order having the force of a decree.	<p>When such decree or order is made by any Civil Court other than a High Court, or by any Revenue Court—</p> <p>(a).—If the amount or value of the subject-matter of the suit wherein such decree or order is made is fifty or less than fifty rupees.</p> <p>(b).—If such amount or value exceeds fifty rupees.</p> <p>When such decree or order is made by a High Court.</p>	<p>Eight annas.</p> <p>One rupee.</p> <p>Four rupees.</p>
8. Copy of any document liable to stamp-duty under the Indian Stamp Act, ² [1899], when left by any party to a suit or proceeding in place of the original withdrawn.	<p>(a).—When the stamp-duty chargeable on the original does not exceed eight annas.</p> <p>(b).—In any other case ...</p>	<p>The amount of the duty chargeable on the original.</p> <p>Eight annas.</p>

II of 1899.

¹ The words "Six-annas", "Twelve annas" and "One rupee eight annas" were substituted for the words "Four annas", "Eight annas" and "One rupee", respectively, by sec. 6 of the Bengal Court-fees (Amendment) Act, 1922 (Ben. Act IV of 1922.)

² This figure was substituted for the figure "1879" by sec. 3 of the Court-fees (Bengal Second Amendment) Act, 1935 (Ben. Act XI of 1935).

of 1870.]

(Schedule I.)

SCHEDULE I.—*contd.**Ad valorem fees.—contd.*

Number.		Proper Fee.
9. Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act, or copy of any account, statement, report or the like, taken out of any Civil or Criminal or Revenue Court or Office, or from the office of any chief officer charged with the executive administration of a Division.	For every three hundred and sixty words or fraction of three hundred and sixty words.	Eight annas.
10. [Rep. by sec. 2 and Schedule of the Guardians and Wards Act, 1890 (VIII of 1890).]		
11. Probate of a will or letters of administration with or without will annexed.	<p>2When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two thousand rupees 4[on such amount or value up to ten thousand rupees], and</p> <p>When such amount or value exceeds ten thousand rupees, 5 * * * * 6[on the portion] of such amount or value which is in excess of ten thousand rupees 7[up to fifty thousand rupees], and</p>	<p>Two per centum * 8.</p> <p>Three per centum. * * * 3.</p>

1 Articles 11, 12, and 12A were substituted for the original Articles 11 and 12, by sec. 13(1) of the Succession Certificate Act, 1889 (VII of 1889). New Article 12 was substituted for Article 12 so substituted by sec. 5(1) of the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act VII of 1935).

2 The first four entries in the second and third columns of Article 11 were substituted for the old entries by s. 7 of the Bengal Court-fees (Amendment) Act, 1922 (Ben. Act IV of 1922).

3 The words "on such amount or value" which were repealed by sec. 3 of the Bengal Court-fees (Amendment No. II) Act, 1922 (Ben. Act VI of 1922), are omitted.

4 These words were substituted for the words "but does not exceed ten thousand rupees" by sec. 3, *ibid.*

5 The words "but does not exceed fifty thousand rupees" were repealed by sec. 3, *ibid.*

6 These words were substituted for the words "for the portion" by sec. 3, *ibid.*

7 These words were added by sec. 3, *ibid.*

(Schedule I.)

SCHEDULE I.—*contd.**Ad valorem fees.*—*contd.*

Number.		Proper Fee.
11. Probate, etc.— <i>contd.</i>	when such amount or value exceeds fifty thousand rupees, ¹ * * * * ³ [on the portion] of such amount or value which is in excess of fifty thousand rupees ⁴ [up to a lakh of rupees],	Four per centum ² * *
	and	
	when such amount or value exceeds a lakh of rupees, ⁵ [on the portion] of such amount or value which is in excess of a lakh of rupees ⁵ [up to two lakhs and fifty thousand rupees],	Five per centum ² * *
	⁶ [and	
	when such amount or value exceeds two lakhs and fifty thousand rupees, on the portion of such amount or value which is in excess of two lakhs and fifty thousand rupees up to three lakhs of rupees,	Five and a half per centum.
	and	
	when such amount or value exceeds three lakhs of rupees, on the portion of such amount or value which is in excess of three lakhs of rupees up to four lakhs of rupees,	Six per centum.
	and	

¹The words "but does not exceed a lakh of rupees" which were repealed by sec. 3 of the Bengal Court-fees (Amendment No. II) Act, 1922 (Ben. Act VI of 1922), are omitted.

²The words "on such amount or value" were repealed by sec. 3, *ibid.*

³These words were substituted for the words "for the portion" by sec. 3, *ibid.*

⁴These words were added by sec. 3, *ibid.*

⁵These words were inserted by sec. 4(a) of the Court-fees (Bengal Second Amendment) Act, 1935 (Ben. Act XI of 1935.)

⁶These words in the second and third columns of Article 11, were inserted by sec. 4(b), *ibid.*

of 1870.]

(Schedule I.)

SCHEDULE I.—*contd.**Ad valorem fees.*—*contd.*

Number.		Proper Fee.
11. Probate, etc.— <i>contd.</i>	<p>when such amount or value exceeds four lakhs of rupees, on the portion of such amount or value which is in excess of four lakhs of rupees up to five lakhs of rupees, and</p> <p>when such amount or value exceeds five lakhs of rupees, on the portion of such amount or value which is in excess of five lakhs of rupees :</p> <p>¹Provided that when, after the grant of certificate under ²[the Indian Succession Act, 1925] or under the Regulation of the Bombay Code, No. VIII of 1827, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.</p>	<p>Six and a half per centum.</p> <p>Seven per centum.]</p>
³ 12. Certificate under the Indian Succession Act, 1925.	<p>When the amount or value of any debt or security specified in the certificate under section 374 of the Act exceeds one thousand rupees,</p> <p>and</p>	<p>Two per centum on the first ten thousand rupees, three per centum on the next forty thousand rupees, four per centum on the next fifty thousand rupees, and five per centum ⁴[on the next one lakh and fifty thousand rupees,</p>

XXXIX of
1925.

¹This proviso was part of the amendment made in this Article by sec. 2 of the Court-fees (Amendment) Act, 1910 (VII of 1910).

²These words and figure were substituted for the words and figure "the Succession Certificate Act, 1889" by sec. 4(c) of the Court-fees (Bengal Second Amendment) Act, 1935 (Ben. Act XI of 1935).

³This Article was substituted for the original Article by sec. 5(1), *ibid.*

⁴These words within square brackets were inserted in this new article by sec. 5(2)(a), *ibid.*

(Schedule I.)

SCHEDULE I.—*contd.**Ad valorem fees.*—*contd.*

Number.		Proper Fee.
	when the aggregate amount or value of any debts or securities specified in the certificate and of any debts or securities to which the certificate has been extended under section 376 of the Act, exceeds one thousand rupees.	<p>five and a half per centum on the next fifty thousand rupees, six per centum on the next one lakh of rupees, six and a half per centum on the next one lakh of rupees and seven per centum] on the remainder of such amount or value,</p> <p>In respect of such portion of the aggregate amount or value as consists of the amount or value of debts or securities so specified, the fee hereinbefore provided in that behalf in this article, and</p> <p>three per centum on such portion of the first ten thousand rupees.</p> <p>four and a half per centum on such portion of the next forty thousand rupees,</p> <p>six per centum on such portion of the next fifty thousand rupees, and</p> <p>seven and a half per centum ¹[on such portion of the next one lakh and fifty thousand rupees,</p> <p>eight and a quarter per centum on such portion of the next fifty thousand rupees,</p> <p>nine per centum on such portion of the next one lakh of rupees,</p>

¹These words were inserted in this new Article by sec. 5(2)(b) of the Court-fees (Bengal Second Amendment) Act, 1935 (Ben. Act XI of 1935).

of 1870.]

(Schedule I.)

SCHEDULE I.—*contd.**Ad valorem fees.—contd.*

Number.		Proper Fee.
		<p>nine and three-quarters per centum on such portion of the next one lakh of rupees, and</p> <p>ten and a half per centum] on such portion of the remainder of such aggregate amount or value as consists of the amount or value of debts or securities to which the certificate has been extended.</p> <p>Note.—(1) The amount of a debt is its amount, including interest on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained.</p> <p>(2) Whether or not any power with respect to a security specified in a certificate has been conferred, under the Act and where such a power has been so conferred whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of the security, or for both purposes, the value of the security is its market-value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.</p>

(Schedule I.)

SCHEDULE I.—*contd.**Ad valorem fees.*—*contd.*

Number.		Proper Fee.
12A. Certificate under the Regulation of the Bombay Code, No. VIII 1827.	<p>¹[(1) As regards debts and securities.</p> <p>(2) As regards other property in respect of which the certificate is granted—</p> <p>When the amount or value of such property exceeds one thousand rupees, but does not exceed ten thousand rupees.</p> <p>When such amount or value exceeds ten thousand rupees, but does not exceed fifty thousand rupees.</p> <p>When such amount or value exceeds fifty thousand rupees.</p>	<p>The same fee as would be payable in respect of a certificate under the Succession Certificate Act, 1889, or in respect of an extension of such a certificate, as the case may be.</p> <p>Two per centum on such amount or value.</p> <p>Two and one-half per centum on such amount or value.</p> <p>Three per centum on such amount or value.]</p>
313 * * *		
414 * * *		
515 * * *		

VII of
1889.¹See foot-note 1 on page 437, *ante*.²These words were substituted for the old entries in the second and the third columns of Art. 12A by sec. 2(ii) of the Court-fees (Amendment) Act, 1910 (VII of 1910).³Article 13 has not been printed here as it does not apply to West Bengal.⁴Article 14 was omitted by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.⁵This article was repealed by sec. 3 and Schedule II of the Repealing and Amending Act 1923 (XI of 1923).

of 1870.]

(Schedule I.)

SCHEDULE I.—contd.

¹ Table of rates of ad valorem fees leviable on the institution of suits.

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper Fee.
Rs.	Rs.	Rs. a.
...	5	0 6
5	10	0 12
10	15	1 2
15	20	1 8
20	25	1 14
25	30	2 4
30	35	2 10
35	40	3 0
40	45	3 6
45	50	3 12
50	55	4 2
55	60	4 8
60	65	4 14
65	70	5 4
70	75	5 10
75	80	6 2
80	85	6 10
85	90	7 2
90	95	7 10
95	100	8 2
100	110	9 12
110	120	11 6
120	130	13 0
130	140	14 10
140	150	16 4
150	160	18 0
160	170	19 2
170	180	20 4
180	190	21 6
190	200	22 8
200	210	23 10
210	220	24 12
220	230	25 14
230	240	27 0
240	250	28 2
250	260	29 4

¹ This table of rates was substituted for the original table of rates by sec. 9 of the Bengal Court-fees (Amendment) Act, 1922 (Ben. Act IV of 1922.)

(Schedule I.)

SCHEDULE I.—*contd.*

Table of rates of *ad valorem* fees leviable on the institution of suits.—*contd.*

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper Fee.
Rs.	Rs.	Rs. a.
260	270	30 6
270	280	31 8
280	290	32 10
290	300	33 12
300	310	34 14
310	320	36 0
320	330	37 2
330	340	38 4
340	350	39 6
350	360	40 8
360	370	41 10
370	380	42 12
380	390	43 14
390	400	45 0
400	410	46 2
410	420	47 4
420	430	48 6
430	440	49 8
440	450	50 10
450	460	51 12
460	470	52 14
470	480	54 0
480	490	55 2
490	500	56 4
500	510	57 6
510	520	58 8
520	530	59 10
530	540	60 12
540	550	61 14
550	560	63 0
560	570	64 2
570	580	65 4
580	590	66 6
590	600	67 8
600	610	68 10
610	620	69 12
620	630	70 14
630	640	72 0
640	650	73 2
650	660	74 4
660	670	75 6

1870.]

(Schedule I.)

SCHEDULE I.—contd.

Table of rates of ad valorem fees leviable on the institution of suits.—contd.

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper Fee.
Rs.	Rs.	Rs. a.
670	680	76 8
680	690	77 10
690	700	78 12
700	710	79 14
710	720	81 0
720	730	82 2
730	740	83 4
740	750	84 6
750	760	85 8
760	770	86 10
770	780	87 12
780	790	88 14
790	800	90 0
800	810	91 2
810	820	92 4
820	830	93 6
830	840	94 8
840	850	95 10
850	860	96 12
860	870	97 14
870	880	99 0
880	890	100 2
890	900	101 4
900	910	102 6
910	920	103 8
920	930	104 10
930	940	105 12
940	950	106 14
950	960	108 0
960	970	109 2
970	980	110 4
980	990	111 6
990	1,000	112 8
1,000	1,100	120 0
1,100	1,200	127 8
1,200	1,300	135 0
1,300	1,400	142 8
1,400	1,500	150 0
1,500	1,600	157 8
1,600	1,700	165 0
1,700	1,800	172 8

(Schedule I.)

SCHEDULE I.—*contd.*

Table of rates of ad valorem fees leviable on the institution of suits.—contd.

When the amount or value of subject-matter exceeds—	But does not exceed—	Proper Fee.	
Rs.	Rs.	Rs.	a.
1,800	1,900	180	0
1,900	2,000	187	8
2,000	2,100	195	0
2,100	2,200	202	8
2,200	2,300	210	0
2,300	2,400	217	8
2,400	2,500	225	0
2,500	2,600	232	8
2,600	2,700	240	0
2,700	2,800	247	8
2,800	2,900	255	0
2,900	3,000	262	8
3,000	3,100	270	0
3,100	3,200	277	8
3,200	3,300	285	0
3,300	3,400	292	8
3,400	3,500	300	0
3,500	3,600	307	8
3,600	3,700	315	0
3,700	3,800	322	8
3,800	3,900	330	0
3,900	4,000	337	8
4,000	4,100	345	0
4,100	4,200	352	8
4,200	4,300	360	0
4,300	4,400	367	8
4,400	4,500	375	0
4,500	4,600	382	8
4,600	4,700	390	0
4,700	4,800	397	8
4,800	4,900	405	0
4,900	5,000	412	8
5,000	5,100	420	0
5,100	5,200	427	8
5,200	5,300	435	0
5,300	5,400	442	8
5,400	5,500	450	0
5,500	5,600	457	8
5,600	5,700	465	0
5,700	5,800	472	8
5,800	5,900	480	0

of 1870.]

(Schedule I.)

SCHEDULE I.—*contd.**Table of rates of ad valorem fees leviable on the institution of suits.—contd.*

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	
Rs.	Rs.	Rs.	a.
5,900	6,000	487	8
6,000	6,100	495	0
6,100	6,200	502	8
6,200	6,300	510	0
6,300	6,400	517	8
6,400	6,500	525	0
6,500	6,600	532	8
6,600	6,700	540	0
6,700	6,800	547	8
6,800	6,900	555	0
6,900	7,000	562	8
7,000	7,100	570	0
7,100	7,200	577	8
7,200	7,300	585	0
7,300	7,400	592	8
7,400	7,500	600	0
7,500	7,750	615	0
7,750	8,000	630	0
8,000	8,250	645	0
8,250	8,500	660	0
8,500	8,750	675	0
8,750	9,000	690	0
9,000	9,250	705	0
9,250	9,500	720	0
9,500	9,750	735	0
9,750	10,000	750	0
10,000	10,500	772	8
10,500	11,000	795	0
11,000	11,500	817	8
11,500	12,000	840	0
12,000	12,500	862	8
12,500	13,000	885	0
13,000	13,500	907	8
13,500	14,000	930	0
14,000	14,500	952	8
14,500	15,000	975	0
15,000	15,500	997	8
15,500	16,000	1,020	0
16,000	16,500	1,042	8
16,500	17,000	1,065	0
17,000	17,500	1,087	8

The Court-fees Act, 1870.

[Act VII]

(Schedule I.)

SCHEDULE I.—contd.

Table of rates of ad valorem fees leviable on the institution of suits.—contd.

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	
Rs.	Rs.	Rs.	a.
17,500	18,000	1,110	0
18,000	18,500	1,132	8
18,500	19,000	1,155	0
19,000	19,500	1,177	8
19,500	20,000	1,200	0
20,000	21,000	1,230	0
21,000	22,000	1,260	0
22,000	23,000	1,290	0
23,000	24,000	1,320	0
24,000	25,000	1,350	0
25,000	26,000	1,380	0
26,000	27,000	1,410	0
27,000	28,000	1,440	0
28,000	29,000	1,470	0
29,000	30,000	1,500	0
30,000	31,000	1,530	0
31,000	32,000	1,560	0
32,000	33,000	1,590	0
33,000	34,000	1,620	0
34,000	35,000	1,650	0
35,000	36,000	1,680	0
36,000	37,000	1,710	0
37,000	38,000	1,740	0
38,000	39,000	1,770	0
39,000	40,000	1,800	0
40,000	41,000	1,830	0
41,000	42,000	1,860	0
42,000	43,000	1,890	0
43,000	44,000	1,920	0
44,000	45,000	1,950	0
45,000	46,000	1,980	0
46,000	47,000	2,010	0
47,000	48,000	2,040	0
48,000	49,000	2,070	0
49,000	50,000	2,100	0
50,000	55,000	2,137	8
55,000	60,000	2,175	0
60,000	65,000	2,212	8
65,000	70,000	2,250	0
70,000	75,000	2,287	8
75,000	80,000	2,325	0

of 1870.]

(Schedule I.)

SCHEDULE I.—*concl'd.*

Table of rates of ad valorem fees leviable of suits.—concl'd.

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	
Rs.	Rs.	Rs.	a.
80,000	85,000	2,362	8
85,000	90,000	2,400	0
90,000	95,000	2,437	8
95,000	1,00,000	2,475	0
1,00,000	1,05,000	2,512	8
1,05,000	1,10,000	2,550	0
1,10,000	1,15,000	2,587	8
1,15,000	1,20,000	2,625	0
1,20,000	1,25,000	2,662	8
1,25,000	1,30,000	2,700	0
1,30,000	1,35,000	2,737	8
1,35,000	1,40,000	2,775	0
1,40,000	1,45,000	2,812	8
1,45,000	1,50,000	2,850	0
1,50,000	1,55,000	2,887	8
1,55,000	1,60,000	2,925	0
1,60,000	1,65,000	2,962	8
1,65,000	1,70,000	3,000	0
1,70,000	1,75,000	3,037	8
1,75,000	1,80,000	3,075	0
1,80,000	1,85,000	3,112	8
1,85,000	1,90,000	3,150	0
1,90,000	1,95,000	3,187	8
1,95,000	2,00,000	3,225	0
2,00,000	2,05,000	3,262	8

and the fee increases at the rate of thirty-seven rupees eight annas for every five thousand rupees, or part thereof, up to a maximum fee of ten thousand rupees, for example—

Rs.	Rs.	a.
3,00,000	4,012	8
4,00,000	4,762	8
5,00,000	5,512	8
6,00,000	6,262	8
7,00,000	7,012	8
8,00,000	7,762	8
9,00,000	8,512	8
10,00,000	9,262	8
11,00,000	10,000	0

(Schedule II.)

SCHEDULE II.

Fixed fees.

Number.		Proper Fee.
1. Application or petition.	<p>(a) When presented to any officer of the Customs or Excise Department or to any Magistrate by any person having dealings with the Government, and when the subject-matter of such application relates exclusively to those dealings ;</p> <p>or when presented to any officer of land-revenue by any person holding temporarily-settled land under direct engagement with Government, and when the subject-matter of the application or petition relates exclusively to such engagement ;</p> <p>or when presented to any municipal Commissioner¹ or member of a District Board² under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement ;</p>	<p>[Two annas.]</p>

¹ These words were substituted for the words "one anna" by sec. 10 of the Bengal Court-fees (Amendment) Act, 1922 (Ben. Act IV of 1922),

² These words were inserted by sec. 10, *ibid*.

of 1870.]

(Schedule II.)

SCHEDULE II.—*contd.*

Fixed fees.—contd.

Number.		Proper Fee.
1. Application or petition.— <i>contd.</i>	or when presented to any Civil Court other than a principal Civil Court of original jurisdiction, ¹ * * * or to any Court of Small Causes constituted under Act, ² No. XI of 1865 or under Act ³ No. XVI of 1868, section 20, or to a Collector or other officer of revenue in relation to any suit or case in which the amount or value of the subject-matter is less than fifty rupees ;	4[Two annas.]
	or when presented to any Civil, Criminal or Revenue Court, or to any Board or executive officer for the purpose of obtaining a copy or translation of any judgment, decree or order passed by such Court, Board or officer, or of any other document on record in such Court or Office.	
	(b) When containing a complaint or charge of any offence other than an offence for which police-officers may, under the ⁵ Criminal Procedure Code, arrest without warrant, and presented to any Criminal Court ;	6[In the case of a complaint or charge of an offence presented to a Criminal Court one rupee, and in other cases twelve annas.]

¹The words "or to any Cantonment Magistrate sitting as a Court of Civil Judicature under Act No. III of 1859" which were repealed by the Cantonments Act, 1889 (XIII of 1889), are omitted.

²See now the Provincial Small Cause Courts Act, 1887 (IX of 1887), by which Act XI of 1865 was repealed.

³See now sec. 25 of the Bengal, Agra and Assam Civil Courts Act, 1887 (XII of 1887).

⁴See foot-note 1 on page 450, *ante*.

⁵See now the Code of Criminal Procedure, 1898 (Act V of 1898).

⁶These words were substituted for the words "Eight annas" by sec. 10 of the Bengal Court-fees (Amendment) Act, 1922 (Ben. Act IV of 1922).

(Schedule II.)

SCHEDULE II.—*contd.**Fixed fees.—contd.*

Number.	Proper Fee.
1. Application or petition.— <i>contd.</i>	<p>or when presented to a Civil, Criminal or Revenue Court, or to a Collector, or any Revenue-officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity, and not otherwise provided for by this Act ;</p> <p>or to deposit in Court revenue or rent ;</p> <p>or for determination by a Court of the amount of compensation to be paid by a landlord to his tenant.</p> <p>(c) When presented to a Chief Commissioner or other Chief Controlling Revenue or Executive Authority, or to a Commissioner of Revenue or Circuit, or to any chief officer charged with the executive administration of a Division and not otherwise provided for by this Act.</p> <p>¹[(d)(i) When presented to the High Court under section 115 of the Code of Civil Procedure, 1908, for revision of an order—</p> <p>(a) when the value of the suit to which the order relates does not exceed Rs. 1,000 ;</p> <p>²[In the case of a complaint or charge of an offence presented to a Criminal Court one rupee, and in other cases twelve annas.</p> <p>³[One rupee eight annas.]</p> <p>Act V of 1908.</p> <p>Five rupees.</p>

¹ These words, figures, letters, and brackets were substituted for the old clause (d) and the entries opposite thereto by sec. 11 of the Bengal Court-fees (Amendment) Act, 1922 (Ben. Act IV of 1922).

² These words were substituted for the words "Eight annas" by sec. 10, *ibid.*

³ These words were substituted for the words "One rupee" by sec. 10, *ibid.*

of 1870.]

(Schedule II.)

SCHEDULE II.—*contd.*

Fixed fees.—contd.

Number.		Proper Fee.
1. Application or petition.— <i>concl'd.</i>	(b) when the value of the suit exceeds Rs. 1,000.	Ten rupees.
	(ii) When presented to the High Court otherwise than under that section.	Two rupees.]
¹ [1A. Application to any Civil Court that records may be called for from another Court.	When the Court grants the application and is of opinion that the transmission of such records involves the use of the post.	Twelve annas in addition to any fee levied on the application under clause (a), clause (b), or clause (d) of Article 1 of this Schedule.]
2. Application for leave to sue as a pauper.	...	Eight annas.
3. Application for leave to appeal as a pauper.	(a) When presented to a District Court.	One rupee.
	(b) When presented to a Commissioner or a High Court.	Two rupees.
4. Complaint or memorandum of appeal in a suit to obtain possession under ² Act No. XVI of 1838, or ³ [the ⁴ Mamlatdars' Courts Act, 1876],	...	Eight annas.
5. Complaint or memorandum of appeal in a suit to establish or disprove a right of occupancy.		

¹Article 1A was inserted by sec. 2 of the Court-fees (Amendment) Act, 1911 (XIV of 1911).

²The Bombay Courts of Adalat Act, 1938.

³These words and figures were substituted for the words, figures and letters "Bombay Act No. V of 1864" (to give Mamlatdars' Courts jurisdiction in certain cases to maintain existing possession or to restore possession to any party dispossessed otherwise than by course of law), by sec. 2 and Schedule II of the Amending Act, 1891 (XII of 1891).

⁴See now the Bombay Mamlatdars' Courts Act, 1906 (Bom. Act II of 1906).

(Schedule II.)

SCHEDULE II.—*contd.**Ad valorem fees.—contd.*

Number.		Proper Fee.
6. ¹ [Bail bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Code of Criminal Procedure, 1898, or the Code of Civil Procedure, 1908, and not otherwise provided for by this Act.]	...	Act V of 1898. Act V of 1908. Eight annas.
7. Undertaking under section 49 of the Indian Divorce Act. *		IV of 1869.
8. [Rep. by sec. 2 and Schedule I of the Amending Act, 1891 (XII of 1891.).]		
9. [Rep. by sec. 2 and Schedule I of Act XII of 1891.]		
10. Mukhtarnama or Wakalatnama.	When presented for the conduct of any one case— (a) to any Civil or Criminal Court other than a High Court, or to any Revenue Court, or to any Collector or Magistrate, or other executive officer, except such as are mentioned in clauses (b) and (c) of this number,	² [One rupee.]

¹ These words and figures were substituted for the original words by sec. 2 and Schedule I of the Second Repealing and Amending Act, 1914 (XVII of 1914).*

² These words were substituted for the words "Eight annas" by sec. 12 of the Bengal Court-fees (Amendment) Act, 1922 (Ben. Act IV of 1922).

of 1870.]

(Schedule II.)

SCHEDULE II.—*contd.*Fixed fees.—*contd.*

Number.		Proper Fee.
10. Mukhtarnama or Wakalatnama,— <i>concl'd.</i>	(b) to a Commissioner of Revenue, Circuit or Customs, or to any officer charged with the executive administration of a Division, not being the Chief Revenue or Executive Authority.	¹ [One rupee eight annas.]
	(c)—to a High Court, Chief Commissioner, Board of Revenue, or other Chief Controlling Revenue or Executive Authority.	Two rupees.
² [11 Memorandum of appeal when the appeal is not from a decree or an order having the force of a decree and is presented—	(a) (i) to any Revenue Court or Executive Officer other than the High Court or Chief Controlling Revenue or Executive Authority.	Eight annas.
	(ii) to any Civil Court other than a High Court	One rupees.
	(b) to a Chief Controlling Executive or Revenue Authority.	Two rupees.
12. Caveat ...	(c) to a High Court ...	Five Rupees.]
	.....	³ [Ten rupees.]
13. Application under Act ⁴ No. X of 1859, section 26, or ⁵ Bengal Act No. VI of 1862, section 9, or ⁶ Bengal Act No. VIII of 1869, section 37.	.....	Five rupees.

¹ These words were substituted for the words "One rupee" by sec. 12 of the Bengal Court-fees (Amendment) Act, 1922 (Ben. Act IV of 1922).

² This Article was substituted for the original Article 11 by sec. 13, *ibid.*

³ These words were substituted for the words "Five rupees" by sec. 14, *ibid.*

⁴ Act X of 1859 was repealed by the Bengal Tenancy Act, 1885 (VIII of 1885), in those portions of the Lower Provinces to which that Act extends.

⁵ Bengal Act VI of 1862 was repealed by the Bengal Tenancy Act, 1885 (VIII of 1885), so far as it affected those portions of the Lower Provinces to which that Act extends.

⁶ Bengal Act VIII of 1869 was repealed by the Bengal Tenancy Act, 1885 (VIII of 1885).

(Schedule II.)

SCHEDULE II.—*contd.*Fixed fees.—*contd.*

Number.		Proper Fee.
14. Petition in a suit under the Native Converts' Marriage Dissolution Act, 1866.	...	Five rupees.
15. [Rep. by sec. 156 and Schedule V of Act V of 1908.]		
16. [Rep. by sec. 18 (1) of Act VI of 1889.]		
17. Complaint or memorandum of appeal in each of the following suits :—		
(i) to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court :	...	1[Fifteen rupees.]
(ii) to alter or cancel any entry in a register of the names of proprietors of revenue-paying estates :	...	1[Fifteen rupees.]
(iii) to obtain a declaratory decree where no consequential relief is prayed :	...	2[Twenty rupees.]
(iv) to set aside an award :	...	1[Fifteen rupees.]

XXI of
1856.

¹ These words were substituted for the words "Ten rupees" by sec. 15 of the Bengal Court-fees (Amendment) Act, 1922 (Ben. Act IV of 1922).

² These words were substituted for the words "Ten rupees" by sec. 15, *ibid.*

of 1870.]

(Schedule II.)

SCHEDULE II.—*contd.**Fixed fees.—contd.*

Number.		Proper Fee.
17. Plaint or memorandum, etc.— <i>concl.</i>		
(v) to set aside an adoption:	.....	¹ [Twenty rupees.]
² [(va) for partition and separate possession of a share of joint family property or of joint property, or to enforce a right to a share in any property on the ground that it is joint family property or joint property if the plaintiff is in possession of the property of which he claims to be a coparcener or co-owner:	.....	Fifteen rupees..]
(vi) every other suit where it is not possible to estimate at a money-value the subject-matter in dispute, and which is not otherwise provided for by this Act.	.....	³ [Fifteen rupees.]
18. Application under ⁴ [paragraph 17 of the Second Schedule to the Code of Civil Procedure, 1908.]	.....	Ten rupees.

Act V of
1908.¹See foot-note 2 on page 456, *ante*.²This entry was inserted by sec. 16(1) of the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act VII of 1935).³See foot-note 1 on page 456, *ante*.⁴These words and figures were substituted for the words and figure, "section 326 of the Code of Civil Procedure" by sec. 6 of the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act XI of 1935).

(Schedule II.)

SCHEDULE II.—*contd.*Fixed fees.—*contd.*

Number.	Proper Fee.
¹ [18A. Application under paragraph 20 of the Second Schedule to the Civil Procedure Code, 1908, to file an arbitration award, and memorandum of appeal from a decree passed under paragraph 21 of the said schedule.	Fifteen rupees.]
² [19. Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908.]	Ten rupees.
20. Every petition under the Indian Divorce Act, except petitions under section 44 of the same Act, and every memorandum of appeal under section 55 of the same Act.	Twenty rupees.
³ 20A. Every petition for restitution of conjugal rights,	Five rupees.

Act V of 1908.

IV of 1869.

¹This article was inserted by sec. 16(2) of the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act VII of 1935).

²Substituted by sec. 155 (4th Sch.) of the Code of Civil Procedure, 1908 (Act V of 1908), for the original entry which was as follows:—

"19-Agreement under section 328 of the same Code".

³Articles 20A and 20B were inserted by sec. 6 of the Court-fees (West Bengal Amendment) Act, 1959 (West Ben. Act XXIII of 1959).

fo 1870.]

(Schedule II.)

SCHEDULE II.—*contd.*Fixed fees.—*contd.*

Number.		Proper Fee.
judicial separation, divorce or divorce by mutual consent under the Special Marriage Act, 1954, and every memorandum of appeal under section 39 of the same Act.	-	XLIII of 1954.
¹ 20B. Every petition for restitution of conjugal rights, judicial separation or divorce under the Hindu Marriage Act, 1955, and every memorandum of appeal under section 28 of the same Act.	.....	Five rupees.
21. Plaint or memorandum of appeal under the ² Parsi Marriage and Divorce Act, 1865.	.....	XXV of 1955. Twenty rupees.
³ [22. Petition. (a) questioning the election of any person as a Municipal Commissioner, when presented to a District Judge under section 36 of the Bengal Municipal Act, 1932;	.....	XV of 1865. Fifteen rupees.]
		Ben. Act XV of 1932.

¹See foot-note 3 on page 458, *ante*.²See now the Parsi Marriage and Divorce Act, 1936 (III of 1936).³This Article was inserted by sec. 16(3) of the Court-fees (Bengal Amendment) Act, 1935 (Ben. Act VII of 1935).

(Schedules II, III.)

SCHEDULE II.—concl'd.

Fixed fees.—concl'd.

Number.	Proper Fee.
(b) questioning the election of any person as a member of a District Board or Local Board, when presented ¹ [to a District Judge under section 18B] of the Bengal Local Self-Government Act of 1885 to decide disputes relating to such elections.	

Ben. Act
III of
1885.²SCHEDULE III.

(See section 19-1.)

FORM OF VALUATION (TO BE USED WITH SUCH MODIFICATIONS, IF ANY,
AS MAY BE NECESSARY).

IN THE COURT OF

*Re Probate of the Will of
property and credits of**(or administration of the,
, deceased.*{ Solemnly affirm
make oath

and say that I am the executor (or one of the executors or one of the next of kin) of , deceased, and that I have truly set forth in Annexure A to this affidavit all the property and credits of which the abovenamed deceased died possessed or was entitled to at the time of his death, and which have come, or are likely to come, to my hands.

2. I further say that I have also truly set forth in Annexure B all the items I am by law allowed to deduct.

3. I further say that the said assets, exclusive only of such last mentioned items, but inclusive of all rents, interests, dividends and increased values since the date of the death of the said deceased, are under the value of

¹Substituted by sec. 8(2) of the Bengal Local Self-Government (Amendment) Act, 1941 (Ben. Act III of 1941), for "to any authority appointed under clause (a) of section 138."

²Sch. III was inserted by sec. 3 of the Court-fees Amendment Act, 1899 (XI of 1899). The original Schedule III was repealed by sec. 1 and Schedule. Part II of Act XIV of 1870.

(Schedule III.)

VALUATION OF THE MOVEABLE AND IMMOVEABLE PROPERTY
OF , DECEASED.

VALUATION OF THE MOVEABLE AND IMMOVEABLE PROPERTY OF , DECEASED.		Rs.	a.	p.
Cash in the house and at the banks, household goods, wearing-apparel, books, plate, jewels, etc.				
(State estimated value according to best of Executor's or Administrator's belief.)				
Property in Government securities transferable at the Public Debt Office				
(State description and value at the price of the day; also the interest separately, calculating it to the time of making the application.)				
Immoveable property consisting of				
(State description, giving, in the case of houses, the assessed value, if any, and the number of years' assessment the market-value is estimated at, and, in the case of land, the area, the market-value and all rents that have accrued.)				
Leasehold property				
(If the deceased held any leases for years determinable, state the number of years' purchase the profit rents are estimated to be worth and the value of such, inserting separately arrears due at the date of death and all rents received or due since that date to the time of making the application.)				
Property in public companies				
(State the particulars and the value calculated at the price of the day; also the interest separately, calculating it to the time of making the application.)				
Policy of insurance upon life, money out on mortgage and other securities, such as bonds, mortgages, bills, notes and other securities for money.				
(State the amount of the whole; also the interest separately, calculating it to the time of making the application.)				
Book debts				
(Other than bad.)				
Stock in trade				
(State the estimated value, if any.)				
Other property not comprised under the foregoing heads				
(State the estimated value, if any.)				
Total				
Deduct amount shown in Annexure B not subject to duty				
Net Total				

[Act VII of 1870.]

(Schedule III.)

SCHEDULE III.—concl'd.

ANNEXURE B.

SCHEDULE OF DEBTS, ETC.

	Rs.	a.	p.
Amount of debts due and owing from the deceased, payable by law out of the estate.			
Amount of funeral expenses			
Amount of mortgage incumbrances			
Property held in trust not beneficially or with general power to confer a beneficial interest.			
Other property not subject to duty			
Total ...			

Act IV of 1871
(The Coroners Act, 1871.)
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Act IV of 1871

(The Coroners Act, 1871.)¹

AMENDED	<div style="display: inline-block; vertical-align: middle;"> <div style="font-size: 3em; vertical-align: middle; margin-right: 5px;">{</div> <div> Act V of 1889. Act XXXVIII of 1920. Ben. Act VII of 1944. </div> </div>
			Act IX of 1871. Act X of 1873.
REPEALED IN PART			Act XII of 1873. Act XVI of 1874. \ Act XII of 1891.
REPEALED IN PART AND AMENDED.			<div style="display: inline-block; vertical-align: middle;"> <div style="font-size: 3em; vertical-align: middle; margin-right: 5px;">}</div> <div> Act X of 1881. Act IV of 1908. </div> </div>
			(a) The Government of India (Adaptation of Indian Laws) Order, 1937.
ADAPTED			(b) The Adaptation of Laws Order, 1950.
			(c) The Adaptation of Laws (No. 2) Order, 1956.
			(27th January, 1871.)

An Act to consolidate and amend the laws relating to Coroners.

Whereas it is expedient to consolidate and amend the laws relating to Coroners in the Presidency-towns ; It is hereby enacted as follows :—

Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called the Coroners Act, 1871. Short title.

[*Local Extent.*].—Rep. by sec. 2 of the Coroners Act, 1881 (*X of 1881*).

[*Commencement.*].—Rep. by the Repealing Act, 1874 (*XVI of 1874*).

2. [*Repeal of enactments.*].—Rep. by the Repealing Act, 1873 (*XII of 1873*).

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see the *Gazette of India*, 1870, Pt. V, page 295 ; for preliminary Report of the Select Committee, see *ibid*, page 351 ; and for proceedings in Council, see *ibid*, 1870, Supplement, pages 1077, 1195, 1298 ; *ibid*, 1871, Supplement, pages 198, 207.

²LOCAL EXTENT.—This Act extends to Calcutta—see sec. 3.

[Act IV

(Chapter II.—Appointment of Coroners.—Chapter III.—Duties and Powers of Coroners.—Sections 3—8.)

CHAPTER II.

APPOINTMENT OF CORONERS.

Coroners of Calcutta [and Bombay].

¹3. Within the local limits of the ordinary original civil jurisdiction of each of the High Courts of Judicature at Fort William [and Bombay] there shall be a Coroner.

Such Coroners shall be called [*respectively*] the Coroner of Calcutta [*and the Coroner of Bombay*].

Their appointment, suspension and removal.

4. Every such officer shall be appointed and may be suspended or removed by the ²[State Government].

* * * * *

Coroners to be public servants.

5. Every Coroner shall be deemed a public servant within the meaning of the Indian Penal Code.

Act XLV of 1860.

Power to hold other offices.

6. Any Coroner may hold simultaneously any other office under Government.

7. [Oath to be taken by Coroner.]—Rep. by the Indian Oaths Act, 1873 (X of 1873).

CHAPTER III.

DUTIES AND POWERS OF CORONERS.

Jurisdiction to inquire into deaths.

8. When a Coroner ⁴[has reason to believe] that the death of any person has been caused by accident, homicide, suicide, or suddenly by means unknown, or that any person being a prisoner has died in prison,

¹Section 3 was substituted for the original sec. 3 by sec. 3 of the Coroners (Madras) Act, 1889 (V of 1889).

²The words "Provincial Government" were first substituted for the words "Local Government" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4 (1) of the Adaptation of Laws Order, 1950.

³The words "Every person now holding such office shall be deemed to have been appointed under this Act" which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

⁴These words were substituted for the words "is informed" by sec. 5 of the Coroners Act, 1881 (X of 1881).

of 1871.]

(Chapter III.—Duties and Powers of Coroners.—Sections 9—12.)

and that the body is lying within the place for which the Coroner is so appointed,

the Coroner shall inquire into the cause of death :

¹Provided that, unless the State² Government otherwise directs, no such inquiry shall be held in the case where the death of any person has been caused by enemy action.

Act XLV
of 1860.

Every such inquiry shall be deemed a judicial proceeding within the meaning of section 193 of the Indian Penal Code.

9. Whenever a prisoner dies in a prison situate within the place for which a Coroner is so appointed, the Superintendent of the prison shall send for the Coroner before the body is³[disposed of].

Coroner
to be sent
for when
prisoner
dies.

Any Superintendent failing herein shall, on conviction before a Magistrate, be punished with fine not exceeding five hundred rupees.

Nothing in the former part of this section applies to cases in which the death has been caused by cholera or other epidemic disease.

10. Whenever an inquest ought to be holden on any body lying dead within the local limits of the jurisdiction of any Coroner, he shall hold such inquest, whether or not the cause of death arose within his jurisdiction.

Power to
hold
inquests
on bodies
within local
limits
wherever
cause of
death
occurred.

11. A Coroner may order a body to be disinterred within a reasonable time after the death of the deceased person, either for the purpose of taking an original inquisition where none has been taken, or a further inquisition⁴[where the Coroner considers it necessary or desirable in the interests of justice to take a further inquisition].

Power to
order
body
to be
disinterred.

12. On receiving notice of any death mentioned in section 8, the Coroner shall summon five, seven, nine, eleven, thirteen or fifteen respectable persons to appear before him at a time and place to be specified in the summons, for the purpose of inquiring when, how and by what means the deceased came by his death.

Summon-
ing jury.

Any inquest under this Act may be held on a Sunday.

Inquest
may be on
Sunday.

¹Added by sec. 3 of the Coroner and Criminal Procedure (Bengal Amendment) Act, 1944 (Ben. Act VII of 1944).

²Substituted for the word "Provincial" by paragraph 4 (1) of the Adaptation of Laws Order, 1950.

³These words were substituted for the word "buried" by sec. 2 of the Coroners (Amendment) Act, 1908 (IV of 1908).

⁴These words were substituted for the words "where the first was insufficient" by sec. 3, *ibid*.

[Act IV

(Chapter III.—Duties and Powers of Coroners. —Sections 13—18.)

Opening
Court.

13. When the time arrives, the Coroner shall proceed to the place so specified, open the Court by proclamation, and call over the names of the jurors.

Jurors to
be sworn.

14. When a sufficient jury is in attendance, he shall administer an oath to each juror to give a true verdict according to the evidence, and shall then proceed with the jury to view the body.

View of
body.

15. The Coroner and the jury shall view and examine the body at the first sitting of the inquest, and the Coroner shall make such observations to the jury as the appearance of the body requires :

¹Provided that the Coroner may, with the concurrence of a majority of the jury, dispense with a view of the body, if he is satisfied, from medical evidence or medical certificates, that no advantage would result from such viewing.

Proclama-
tion for
witnesses.

16. The Coroner shall then make proclamation for the attendance of witnesses, or, where the inquiry is conducted in secret, shall call in separately such as know anything concerning the death.

Summon-
ing wit-
nesses.

17. ²[It shall be the duty of all persons acquainted with the circumstances attending the death to appear before the inquest as witnesses ; the Coroner shall inquire of such circumstances and the cause of death, and, if before or during the inquiry he is informed that any person, whether within or without the local limits of his jurisdiction, can give evidence or produce any document material thereto, may issue a summons requiring him to attend and give evidence or produce such document on the inquest.

Any person disobeying such summons shall be deemed to have committed an offence under section 174, section 175 or section 176 of the Indian Penal Code, as the case may be.]

Act XLV
of 1860.

For the purpose of causing prisoners to be brought up to give evidence, the Coroner shall be deemed a Criminal Court within the meaning of ³[Part IX ⁴of the Prisoners Act, 1900.]

Act III
of 1900.Post-
mortem
examina-
tion.
Fees to
medical
witnesses.

18. The Coroner may direct the performance of a *post-mortem* examination, with or without an analysis of the contents of the stomach or intestines, by any medical witness, summoned to attend the inquest ; and every medical witness other than the Chemical Examiner to Government, shall be entitled to such reasonable remuneration as the Coroner thinks fit.

¹This proviso was added by sec. 4 of the Coroners (Amendment) Act, 1908 (IV of 1908).

²These words and figures were substituted for the original words by sec. 6 of the Coroners Act, 1881 (X of 1881).

³These words and figures were substituted for the words and figures "Act No. XV of 1869 (to provide facilities for obtaining the evidence and appearance of prisoners and for service of process upon them)" by sec. 5 of the Coroners (Amendment) Act, 1908 (IV of 1908).

⁴Now see the Prisoners (Attendance in Courts) Act, 1955 (XXXII of 1955).

of 1871.]

(Chapter III.—Duties and Powers of Coroners.—Sections 18A—21.)

Act V of
1898:

¹18A. Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Act, may be used as evidence in any inquest under this Act and in any subsequent inquiry, trial or other proceeding under the Code of Criminal Procedure, 1898.

Report of
Chemical
Examiner.

19. All evidence given under this Act shall be on oath, and the Coroner shall be bound to receive evidence on behalf of the party (if any) accused of causing the death of the deceased person.

Evidence
to be on
oath.
Evidence
on behalf
of accused.

Witnesses unacquainted with the English language shall be examined through the medium of an interpreter, who shall be sworn to interpret truly as well the oath as the questions put to, and the answers given by, the witnesses.

Inter-
preter.

After each witness has been examined, the Coroner shall inquire whether the jury wish any further questions to be put to the witness, and, if the jury wish that any such questions should be put, the Coroner shall put them accordingly.

Questions
suggested
by jury.

20. The Coroner shall commit to writing the material parts of the evidence given to the jury, and shall read or cause to be read over such parts to the witness and then procure his signature thereto.

Coroner to
take down
evidence
in writing.

Act XLV
of 1860.

Any witness refusing so to sign shall be deemed to have committed an offence under section 180 of the Indian Penal Code.

Witnesses
to sign
depositions.

Every such deposition shall be subscribed by the Coroner.

Coroner to
subscribe
depositions.

I of 1872.

²[For the purposes of section 26 of the Indian Evidence Act, 1872, a Coroner shall be deemed to be a Magistrate.]

Coroner a
Magistrate.

21. The Coroner may adjourn the inquest from time to time, and from place to place.

Adjourn-
ment of
inquest.

Whenever the inquest is adjourned the Coroner shall take the recognizances of the jurors to attend at the time and place appointed, and notify to the witnesses when and where the inquest will be proceeded with.

Jurors'
recogni-
zances.

¹Section 18A was inserted by sec. 6 of the Coroners (Amendment) Act 1908 (IV of 1908).

²These words were added by sec. 7 of the Coroners Act, 1881 (X of 1881).

[Act IV

(Chapter III.—Duties and Powers of Coroners.—Sections 22—25.)

The amount of such recognizances shall in each case be fixed by the Coroner, ¹[and the whole, or such part thereof as to the Coroner seems fit, shall, in default of attendance by the jurors, be recoverable in the same manner as a fine imposed under section 31].

Coroner to
sum up to
jury.

22. When all the witnesses have been examined, the Coroner shall sum up the evidence to the jury, and the jury shall then consider of their verdict.

Coroner to
draw up
inquisi-
tion.

23. When the verdict is delivered the Coroner shall draw up the inquisition according to the finding of the jury, or, when the jury is not unanimous, according to the opinion of the majority.

Contents of
inquisition.

24. Every inquisition under this Act, shall be signed by the Coroner with his name and style of office and by the jurors, and shall set forth—

- (1) where, when and before whom the inquisition be holden,
- (2) who the deceased is,
- (3) where his body lies,
- (4) the names of the jurors, and that they present the inquisition upon oath,
- (5) where, when and by what means the deceased came by his death, and
- (6) if his death was occasioned by the criminal act of another, who is guilty thereof.

If the name of the deceased be unknown, he may be described as a certain person to the jurors unknown.

Every such inquisition shall be in the form set forth in the Second Schedule hereto annexed, with such variation as the circumstances of each case require.

Procedure
where
death is
found due
to an act
amounting
to an
offence.

²**25.** When the jury or majority of the jury find that the death of the deceased person was occasioned by an act which amounts to an offence under any law in force in ³[India] the Coroner shall immediately after the inquest forward a copy of the inquisition, together with the names and addresses of the witnesses, to the Commissioner of Police.

¹ These words were added by sec. 7 of the Coroners (Amendment) Act, 1908 (IV of 1908).

² Section 25 was substituted for the original section 25 by sec. 8, *ibid*.

³ The words "a Part A State or a Part C State" were substituted by para. 3 and the 1st Schedule of the Adaptation of Laws Order, 1950, for the words "the Provinces" and thereafter the word "India" was substituted for the former words by the Schedule to the Adaptation of Laws (No. 2) Order, 1956.

of 1871.]

(Chapter III.—Duties and Powers of Coroners.—Chapter IV.—Coroners' Juries.—Sections 26–31.)

26. The Coroner may also, where the verdict justifies him in so doing, issue his warrant for the apprehension of the person who is found to have caused the death of the deceased person, and send him forthwith to a Magistrate empowered to commit him for trial.

Power to arrest and commit for trial.

27. [Power to accept bail.]—Rep. by s. 10 of the Coroners (Amendment) Act, 1908 (IV of 1908).

28. When the proceedings are closed, or before, if it be necessary to adjourn the inquest, the Coroner shall give his warrant for the '[disposal] of the body on which the inquest has been taken.

Warrant for disposal of the body.

29. No inquisition found upon or by any inquest shall be quashed for any technical defect.

Inquisitions not to be quashed for want of form.

In any case of technical defect, a Judge of the High Court may, if he thinks fit, order the inquisition to be amended, and the same shall forthwith be amended accordingly.

Amendment of inquisition.

30. It shall no longer be the duty of the Coroner to inquire whether any person dying by his own act was or was not *felo de se*, to inquire of treasure-trove or wrecks, to seize any fugitive's goods, to execute process or to exercise as Coroner any jurisdiction not expressly conferred by this Act.

Cessation of jurisdiction as to treasure-trove, wrecks, etc.

A *felo de se* shall not forfeit his goods.

Felo de se.

Deodands are hereby abolished.

Deodands.

CHAPTER IV.

CORONERS' JURIES.

31. Whenever any person has been duly summoned to appear as a juror by a Coroner, and fails or neglects to attend at the time and place specified in the summons, the Coroner may cause him to be openly called in his Court three times to appear and serve as a juror; and upon the non-appearance of such person, and proof that such summons has been served upon him, or left at his usual place of abode, may impose such fine upon the defaulter, not exceeding fifty rupees, as to the Coroner seems fit.

Fine on juror neglecting to attend.

¹Section 26 was substituted for the original section 26 by sec. 9 of the Coroners (Amendment) Act, 1908 (IV of 1908).

²This word was substituted for the word "burial" by sec. 11, *ibid*.

[Act IV

(Chapter IV.—Coroners' Juries.—Chapter V.—Rights and Liabilities of Coroners.—Sections 32—38.)

Certificate
as to
defaulting
juror.

32. The Coroner shall make out and sign a certificate, containing the name and surname, the residence and trade or calling of every person so making default, together with the amount of the fine so imposed, and the cause of such fine,

and shall send such certificate to one of the Magistrates of the place of which he is the Coroner,

Service
of copy of
certificate.

and shall cause a copy of such certificate to be served upon the person so fined, by having it left at his usual place of residence, or by sending the same through the Post Office, addressed as aforesaid and registered.

Levy of
fine,

33. Thereupon such Magistrate shall cause the fine to be levied in the same manner as if it had been imposed by himself.

Jurors not
to be sum-
moned
twice
within the
year.

34. Unless in case of necessity, no person who has appeared, or has been summoned to appear, as a juror on an inquest, and has not made default, shall, within one year after such appearance or summons, be summoned to appear as a juror under this Act.

Jurors on
inquest on
prisoner.

35. When an inquest is held on the body of a prisoner dying within a prison and no prisoner confined therein shall be a juror on such inquest.

CHAPTER V.

RIGHTS AND LIABILITIES OF CORONERS.

Coroner's
salary.

36. Every Coroner shall be entitled to such salary for the performance of the duty of his office as is prescribed in that behalf by the ¹[State Government].

Disburse-
ments to
be repaid.

37. All disbursements duly made by a Coroner for fees to medical witnesses, hire of rooms for the jury, and the like, shall be repaid to him by the ¹[State Government].

Power to
appoint
deputy.

38. Every Coroner may, from time to time, with the previous sanction of the ¹[State Government], appoint, by writing under his hand, a proper person to act for him as his deputy in the holding of inquests ²* * *.

¹ See foot-note 2 on page 466, ante.

² The words "and such deputy shall take and subscribe, before one of the Judges of the High Court, an oath that he will faithfully discharge the duties of his office" which were repealed by the Indian Oaths Act, 1873 (X of 1873), are omitted.

of 1871.]

(Chapter V.—Rights and Liabilities of Coroners.—Sections 39—42.—First and Second Schedules.)

All inquests taken and other acts done by any such deputy, under or by virtue of any such appointment, shall be deemed to be the acts of the Coroner appointing him :

Provided that no such deputy shall act for any such Coroner except during the illness of the said Coroner, or during his absence for any lawful and reasonable cause.

Every such appointment may at any time be cancelled and revoked by the Coroner by whom it was made.

Revoca-
tion of
appoint-
ment.

39. No Coroner or Deputy Coroner shall be liable to serve as a juror.

Exemp-
tion
from
serving on
juries.

40. Coroners and Deputy Coroners shall be privileged from arrest while engaged in the discharge of their official duty.

Privilege
from
arrest.

41. Any Coroner or Deputy Coroner failing to comply with the provisions of this Act, or otherwise misconducting himself in the execution of his office, shall be liable to such fine as the Chief Justice of the High Court, upon summary examination and proof of the failure or misconduct, thinks fit to impose.

Penalty
for failure
to comply
with Act.

42. No proceeding for anything done under this Act, or for any failure to comply with its provisions, shall be commenced or prosecuted ¹* * * after tender of sufficient amends.

Limita-
tion of
suits.

FIRST SCHEDULE.

(Enactments repealed.)

Rep. by the Repealing Act, 1873 (XII of 1873).

SECOND SCHEDULE.

FORM OF INQUISITION.

AN INQUISITION taken at _____ on the _____ day of _____ 187____, before *E F*, Coroner of _____, ²[in the case of *A B*, deceased], upon the oath of *G H*, *I J*, *K L*, and *M N* then and there duly sworn and charged to inquire when, how and by what means the said *A B* came to his death.

¹The words "after the expiration of three months from such act or failure, nor," which were repealed by the Indian Limitation Act, 1871 (IX of 1871), are omitted.

²These words and letters were substituted for the words and letters "on view of the body of *A B* then and there lying dead" by sec. 12 of the Coroners (Amendment) Act, 1908 (IV of 1908).

(Second Schedule.)

Second Schedule.—concl'd.

We, the said jurors, find unanimously (or by a majority of)
 that the death of the said A B was caused, on or about the day of
 187 , by (here state the cause of death as in the following
examples)—

1. *Cases of homicide*—a blow on the head with a stick inflicted on him
 by C D, under such circumstances that the act
 of C D was justifiable [or accidental] homicide.

—a stab on the heart with a knife inflicted on him
 by C D, under such circumstances that the act
 of C D was culpable homicide not amounting
 to murder (or culpable homicide amounting to
 murder or a rash or negligent act not amount-
 ing to culpable homicide).

2. *Cases of accident*—falling out of a boat into the river Hooghly,
 whereby he was drowned.

—a kick from a horse which fractured his skull and
 ruptured blood-vessels in his head.

3. *Cases of suicide*—shooting himself through the head with a pistol.

—arsenic, which he voluntarily administered to
 himself.

4. *Cases of sudden death by means unknown*—disease of the heart.

—apoplexy.

—sunstroke.

And so say the jurors upon their oath aforesaid.

Witness our hands—E F, Coroner of

G H, I J, K L, M N, O P (Jurors).

Act I of 1878
(The Opium Act, 1878.)

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Act I of 1878

(The Opium Act 1878.)¹

AMENDED	<div> <div>...</div> <div> { Act II of 1930. Act XXXIII of 1950. LII of 1957. Ben. Act V of 1933. </div> </div>
REPEALED IN PART	Act IV of 1894.
REPEALED IN PART AND AMENDED.	<div> { Act XII of 1891. Act XXXVIII of 1920. </div>
ADAPTED	<div> ¹(a) The Government of India (Adaptation of Indian Laws) Order, 1937. (b) The Indian Independanc Adaptation of Bengal and Punjab Acts) Order, 1948. (c) The Adapataion of Laws (Order, 1950. </div>

(9th January, 1878.)

An Act to amend the law relating to opium.

Whereas it is expedient to amend the law relating to opium; Preamble.
 It is hereby enacted as follows :—

1. This Act may be called the Opium Act, 1878.

Short
title and
extent.

²[It extends to the whole of India except the State of Jammu and Kashmir.]

2. [*Repeal and amendment of enactments.*].—Rep. partly by sec. 2 and Schedule I, Part 1, of the Amending Act, 1891 (XII of 1891), and partly by sec. 2 and Schedule I of the Amending Act, 1894 (IV of 1894).

¹For the Statement of Objects and Reasons, see the *Gazette of India*, 1887, Part V, page 645; for Proceedings in Council, see *ibid.*, Supplement, pages 3015 and 3030; *ibid.*, 1878, pages 53 and 80.

For the Statement of Objects and Reasons of the Opium (Bengal Amendment) Bill, 1932, see the *Calcutta Gazette* of 1932, pt. IV, pages 1-3; for Report of the select Committee, see *ibid.*, 1932, pt. IV, pages 13-21; and for Proceedings in Council, see the Proceedings of the Bengal Legislative Council, Vol. XXXVIII, No. 1, pages 365-367; *ibid.*, Vol. XXXIX, No. 2, pages 50-62; *ibid.*, Vol. XLI, No. 2, pages 37 and 38.

It has been extended by notification in the *Gazette of India* to Bengal from 21st August, see the *Gazette of India* of 1878, Pt. I, page 526.

This Act and all Rules and Orders made under this Act extend to, and shall be in force in, the rest of India except the State of Jammu and Kashmir. See sec. 2 of Act 33 of 1950.

²These words were substituted for the original words by sec. 2 and Schedule of the Opium and Revenue Laws (Extension of Application) Act, 1950 (XXXIII of 1950).

[Act I

(Sections 3, 4.)

Interpre-
tation.

3. In this Act, unless there be something repugnant in the subject or context,—

¹["opium" means—

²[(i) the capsules of the poppy (*Papaver Somniferum L.*), whether in their original form or cut, crushed or powdered, and whether or not juice has been extracted therefrom ;]

(ii) the spontaneously coagulated juice of such capsules which has not been submitted to any manipulations other than those necessary for packing and transport ; and

(iii) any mixture, with or without neutral materials, of any of the above forms of opium,

but does not include any preparation containing not more than 0·2 per cent. of morphine, or a manufactured drug as defined in section 2 of the Dangerous Drugs Act, 1930 ;]

"Magistrate" means, in the Presidency-towns, a Presidency Magistrate, and elsewhere, a Magistrate of the first class or (when specially empowered by the ³[State Government] to try cases under this Act) a Magistrate of the second class ;

⁴"customs frontiers" means any of the customs frontiers of India as defined by the Central Government under section 3A of the ⁵Sea Customs Act, 1878 (VIII of 1878) ;

⁴"import" and "export" mean respectively to bring into, or take out of, a State otherwise than across any customs frontiers ;

⁴"transport" means to remove from one place to another within the same State ;

⁴"sale" does not include sale for export across customs frontiers, and "sell" shall be construed accordingly.

4. Except as permitted by this Act, or by any other enactment relating to opium for the time being in force, or by rules framed under this Act or under any such enactment, no one shall—

6 * * * * *

Prohibi-
tion of
poppy
cultiva-
tion and
possession,
etc., of
opium.

¹This definition was substituted by sec. 40 and Sch. II of the Dangerous Drugs Act, 1930 (II of 1930).

²Substituted for the former clause by sec. 2 of the Opium Laws (Amendment) Act, 1957 (LII of 1957).

³The words "Provincial Government" were first substituted for the words "Local Government" by paragraph 4(I) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

⁴These definitions were substituted by sec. 2(2) and the Sch. to the Opium and Revenue Laws (Extension of Application) Act, 1950 (XXXIII of 1950).

⁵The Sea Customs Act, 1878 (VIII of 1878) has been repealed and re-enacted by the Customs Act, 1962 (LII of 1962).

⁶Original clauses (a) and (b) were omitted by sec. 40 and Schedule II of the Dangerous Drugs Act, 1930 (II of 1930).

of 1878.]

(Sections 5—7.)

- ¹[(a)] possess opium ;
¹[(b)] transport opium ;
¹[(c)] import or export opium ; or
¹[(d)] sell opium.

5. The ²[State Government], ³* * * * may, from time to time, by notification in the ⁴[Official Gazette], make rules consistent with this Act, to permit absolutely, or subject to the payment of duty or to any other conditions, and to regulate, within the whole or any specified part of the territories administered by such Government, all or any of the following matters :—

Power to make rules to permit such matters.

- ⁵* * * * *
- ⁶[(a)] the possession of opium ;
⁶[(b)] the transport of opium ;
⁶[(c)] the importation or exportation of opium ; and
⁷[(d)] the sale of opium and the form of taxation leviable on such sale :

Provided that no duty shall be levied under any such rule on any opium imported and on which a duty is imposed by or under the law relating to sea-customs⁸ for the time being in force or under ⁹[the Dangerous Drugs Act, 1930].

f 1930.

6. [Duty on opium imported by land.]—Rep. by sec. 40 and Schedule II of the Dangerous Drugs Act, 1930 (II of 1930).

¹⁰7. The State¹¹ Government may, by notification published in the Official Gazette, declare any place to be a warehouse for all or any opium legally imported, whether before or after the payment of any duty leviable thereon, into the territories administered by that Government, or into any specified part thereof, and intended to be exported thence.

Warehousing opium.

¹Original clauses (c), (d), (e) and (f) were re-lettered by sec. 40 and Schedule II of the Dangerous Drugs Act, 1930 (II of 1930).

²See foot-note 3 on page 478, ante.

³The words "subject to the control of the Governor General in Council," were omitted by sec. 3(1) of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

⁴These word were substituted for the words "Local Gazette" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵Original clauses (a) and (b) were omitted by sec. 40 and Sch. II of the Dangerous Drugs Act, 1930 (II of 1930).

⁶Original clauses (c), (d), (e) and (f) were re-lettered, *ibid*.

⁷Clause (d) was substituted for former clause (d) by sec. 3(2) of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

⁸See the Customs Act, 1962 (LII of 1962).

⁹These words and figure were substituted for the word and figure "section 6" by sec. 40 and Sch. II of the Dangerous Drugs Act, 1930 (II of 1930).

¹⁰Section 7 was substituted for the original section 7 by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

¹¹Substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

(Sections 8, 9.)

So long as the declaration remains in force, the owner of all such opium shall be bound to deposit it in that warehouse.

Power to make rules relating to warehouses.

8. The ¹[State Government], ²* * * may, from time to time, by notification in the ³[Official Gazette], make rules consistent with this Act to regulate the safe custody of opium warehoused under section 7; the levy of fees for such warehousing; the removal of such opium for sale or exportation; and the manner in which it shall be disposed of, if any duty or fees leviable on it be not paid within twelve months from the date of warehousing the same.

Penalty for illegal cultivation of poppy, etc.

9. Any person who, in contravention of this Act, or of rules made and notified under section 5 or section 8,—

- ⁴* * * * *
- ⁵[(a)] possesses opium, or
- ⁵[(b)] transports opium, or
- ⁵[(c)] imports or exports opium, or
- ⁵[(d)] sells opium, or
- ⁵[(e)] omits to warehouse opium, or removes or does any act in respect of warehoused opium,

and any person who otherwise contravenes any such rule, shall, on conviction before a ⁶[Court], be punished for each such offence with imprisonment for a term which may extend to ⁷[two years or with fine], or with both; ⁸

and, where a fine is imposed, the convicting ⁶[Court] shall direct the offender to be imprisoned in default of payment of the fine for a term which may extend to six months, and such imprisonment shall be in excess of any other imprisonment to which he may have been sentenced.

⁹*Explanation.*—The possession of a railway receipt or a steamer or mate's receipt relating to an undelivered parcel of opium lying in a railway or steamer office *prima facie* constitutes possession of the opium within the meaning of clause (a) of section 9, unless the accused person is able to give a satisfactory explanation for its possession.

¹See foot-note 3 on page 478, *ante*.

²The words "subject to the control of the Governor General in Council," were omitted by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

³See foot-note 4 on page 479, *ante*.

⁴Original clauses (a) and (b) were omitted by sec. 40 and Sch. II of the Dangerous Drugs Act, 1930 (II of 1930).

⁵Original clauses (c), (d), (e), (f) and (g) were re-lettered, *ibid*.

⁶This word was substituted for the word "Magistrate" by sec. 4(2) of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

⁷These words were substituted for the words "one year, or with fine which may extend to one thousand rupees" by sec. 4(1), *ibid*.

⁸The corresponding portion (commencing with the words "shall, on conviction" and ending with the words "or with both") of the Central Act, as amended by section 3 of the Opium Laws (Amendment) Act, 1957 (LII of 1957), reads as follows, namely:—

"shall, on conviction before a Magistrate, be punishable for each such offence with imprisonment which may extend to three years, with or without fine;"

of 1878.]

(Sections 9A—9D.)

¹9A. (1) When opium is imported, exported, transported, sold or possessed by any person on account of any other person, and such other person knows or has reason to believe that such import, export, transport, sale or possession is on his account, the article shall, for the purposes of this Act, be deemed to be imported, exported, transported, sold or possessed by such other person.

Import,
export,
transport,
sale or
possession
by one
person
on account
of another.

(2) Nothing in sub-section (1) shall absolve any person who imports, exports, transports, sells or possesses opium on account of another person from liability to any punishment under this Act, for the unlawful import, export, transport, sale or possession of such article.

¹9B. When any offence punishable under section 9 is committed by any person in the employ and acting on behalf of the holder of a license, permit or pass granted under this Act, such holder shall also be punishable as if he had himself committed the offence unless he establishes that all due and reasonable precautions were exercised by him to prevent the commission of such offence.

Criminal
liability
of licensee
for acts of
servant.

¹9C. If the holder of any license, permit or pass granted under this Act or any person in his employ and acting on his behalf—

Penalty
for certain
acts by
licensee or
his servant.

- (a) fails to produce without satisfactory explanation such license, permit or pass on the demand of any officer empowered by the ²[State Government] by notification in the ³[Official Gazette] to make such demand, or
- (b) in any case not provided for by section 9, wilfully contravenes any rule made under section 5 or section 8, or
- (c) wilfully and knowingly does any act in breach of any of the conditions of the license, permit or pass, for which a penalty is not prescribed elsewhere in this Act,

he shall, for every such offence, be punished with fine which may extend to five hundred rupees.

¹9D. If any person without lawful authority has in his possession any quantity of opium knowing the same to have been unlawfully imported, transported, or manufactured or knowing that the prescribed duty has not been paid thereon, he shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

Penalty
for
possession
of opium
in respect
of which
an offence
has been
committed.

¹Sections 9A to 9G were inserted by sec. 5 of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

²See foot-note 2 on page 478, ante.

³See foot-note 4 on page 479, ante.

(Sections 9E—11.)

Penalty for attempting or abetting offence.

19E. Whoever attempts to commit or abets the commission of an offence punishable under this Act, shall be punished with the punishment provided for such offence.

Explanation.—The word “abets” as used in this section and in section 9F has the same meaning as in section 107 of the Indian Penal Code.

Act XLV of 1860.

Penalty for attempting or abetting offence outside West Bengal.

19F. Any person who in ²[West Bengal] attempts or abets the commission, in any place outside ²[West Bengal], of any offence punishable under this Act or under the provisions of any corresponding law in force in that place, or does any act preparatory to, or in furtherance of, any act which, if committed in ²[West Bengal], would constitute an offence against this Act, shall be punished with imprisonment for a term which may extend to five years, or with fine, or with both.

Explanation.—The offences referred to in this section are independent of the existence, location, possession, origin, destination or other attribute of the opium to which they relate.

Enhanced punishment after previous conviction.

19G. Whoever, having been convicted of an offence punishable under sections 9, 9A, 9B, 9C, 9D, 9E, or 9F, shall be guilty of any offence punishable under any of these sections, shall be liable for each such subsequent offence to twice the punishment which might be imposed on a first conviction under this Act :

Provided that nothing in this section shall prevent any offence, which might otherwise have been tried summarily under Chapter XXII of the Code of Criminal Procedure, 1898, from being so tried.

Act V of 1898.

Presumption in prosecutions under section 9.

10. In prosecutions under section 9, it shall be presumed until the contrary is proved, that all opium for which the accused person is unable to account satisfactorily is opium in respect of which he has committed an offence under this Act.

Confiscation of opium.

11. In any case in which an offence ³[under section 9, 9A, 9B, 9C, 9D, 9E, 9F, or 9G] has been committed,—

4 * * * * *

⁵[(a) the opium in respect of which any offence * * * has been committed.]

¹ See foot-note 1 on page 481, *ante*.

² Substituted for the word “Bengal” by para. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³ These words, figures and letters were substituted for the words and figure “under section 9” by sec. 6(1) of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

⁴ Original clause (a) was omitted, by sec. 40 and Sch. II of the Dangerous Drugs Act, 1930 (II of 1930).

⁵ Original clauses (b), (c) and (d) were re-lettered, *ibid*.

The words “under the same section” were omitted by sec. 6(2) of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

of 1878.]

(Section 12.)

¹[(b)] where, in the the case of an offence ²[relating to the transport, import or export of opium], the offender is transporting, importing or exporting any opium exceeding the quantity (if any) which he is permitted to transport, import or export, as the case may be, the whole of the opium which he is transporting, importing or exporting,

¹[(c)] where, in the case of an offence ³[relating to the sale of opium], the offender has in his possession any opium other than the opium in respect of which the offence has been committed, the whole of such other opium,

shall be liable to confiscation.

The ⁴[receptacles], packages and coverings in which any opium liable to confiscation under this section is found, and the other contents (if any) of the ⁵[receptacle] or package in which such opium may be concealed, and the animals, ⁶[carts, vessels, rafts] and conveyances used in carrying it, shall likewise be liable to confiscation:

12. When the offender is convicted, or when the person charged with an offence in respect of any opium is acquitted, but the ⁷[Court] decides that the opium is liable to confiscation, such confiscation may be ordered by the ⁷[Court].

Order of
confisca-
tion by
whom to
be made.

Whenever confiscation is authorized by this Act, the officer ordering it may give the owner of the thing liable to be confiscated an option to pay, in lieu of confiscation, such fine as the officer thinks fit.

When an offence against this Act has been committed, but the offender is not known or cannot be found, or when opium not in the possession of any person cannot be satisfactorily accounted for, the case shall be inquired into and determined by the Collector of the district or Deputy Commissioner, or by any other officer authorized by the ⁸[State Government] in this behalf, either personally or in right of his office, who may order such confiscation: Provided that no such order shall be made until the expiration of one month from the date of seizing the things intended to be confiscated or without hearing the persons (if any) claiming any right thereto, and the evidence (if any) which they produce in support of their claims.

¹ See foot-note 5 on page 482, *ante*.

² These words were substituted for the words "under clause (b) or (c) of the same section" by sec. 6(3), of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

³ These words were substituted for the words "under clause d) of (the same section)" by sec. 6(4), *ibid*.

⁴ This word was substituted for the word "vessels" by sec. 6(5), *ibid*.

⁵ This word was substituted for the word "vessel" by sec. 6(5), *ibid*.

⁶ These words were inserted by sec. 6(5), *ibid*.

⁷ This word was substituted for the word "Magistrate" by sec. 7, *ibid*.

⁸ See foot-note 2 on page 478, *ante*.

(Sections 13, 14.)

Power to make rules regarding disposal of things confiscated, and rewards.

Power to enter, arrest and seize, on information that opium is unlawfully kept in any enclosed place.

13. The ¹[State Government] may, ²* * * * * from time to time, by notification in the ³[Official Gazette] make rules consistent with this Act to regulate—

- (a) the disposal of all things confiscated under this Act ; and
- (b) the rewards to be paid to officers and informers ⁴* * *.

14. ⁵[Any officer not below the rank of a sub-inspector of the Department of Excise, Police and any officer of the Customs, Salt or Revenue Departments], who may in right of his office be authorized by the ¹[State Government] in this behalf, and ⁶who has reason to believe, from personal knowledge or from information given by any person and taken down in writing, that opium liable to confiscation under this Act is ⁷kept or concealed in any building, vessel or enclosed place, may, ⁸[at any time by day or night],—

- (a) enter into any such building, vessel, or place ;
- (b) in case of resistance, break open any door and remove any other obstacle to such entry ;
- (c) seize such opium ⁹ * * * * * and any other thing which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium ¹⁰[and also any other thing or document which throws or is likely to throw any light on the alleged offence] ; and

¹See foot-note 2 on page 478, ante.

²The words "with the previous sanction of the Governor General in Council" which were repealed by sec. 2 and Sch. I, Part I of the Devolution Act, 1920 (XXXVIII of 1920), are omitted.

³See foot-note 4 on page 479, ante.

⁴The words "out of the proceeds of fines and confiscations under this Act" were omitted by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵These words were substituted for the words "Any officer of any of the departments of Excise, Police, Customs, Salt, Opium or Revenue superior in rank to a peon or a constable" by sec. 8(1) of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

⁶The corresponding portion (commencing with the words "Any officer not below" and ending with the words "in this behalf, and") of the Central Act, as amended by section 4 of the Opium Laws (Amendment) Act, 1957 (LII of 1957), reads as follows, namely :—

"Any officer of the department of Central Excise, Narcotics, Drugs Control, Customs, Revenue, Police or Excise, superior in rank to a peon or constable, authorized in this behalf by the Central Government or the State Government,"

⁷The word "manufactured" was omitted by sec. 40 and Sch. II of the Dangerous Drugs Act, 1930 (II of 1930).

⁸These words were substituted for the words "between sunrise and sunset" by sec. 8(2) of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

⁹The words "and all materials used in the manufacture thereof" were omitted by sec. 40 and Sch. II of the Dangerous Drugs Act, 1930 (II of 1930).

¹⁰These words were inserted by sec. 8(3) of the Opium (Bengal Amendment Act, 1933 (Ben. Act V of 1933).

of 1878.]

(Sections 15—18.)

- (d) detain and search, and if he think proper, arrest any person whom he has reason to believe to be guilty of any offence relating to such opium under this or any other law for the time being in force.

15. Any officer of any of the said departments ¹[or any officer of the Department of Posts and Telegraphs or of any railway or steamer administration controlled by ²the Federal Railway Authority or any Government or by a railway or steamship company, such officer being duly authorised in this behalf by the ³[State Government] may

Power to seize opium in open places.

- (a) seize, in any open place or in transit, any opium or other thing which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium ⁴and also any other thing or document which throws or is likely to throw any light on the alleged offence ; and]

- (b) detain and search any person whom he has reason to believe to be guilty of any offence against this or any other such law, and, if such person has opium in his possession, arrest him and any other persons in his company.

Power to detain, search and arrest.

16. All searches under section 14 or section 15 shall be made in accordance with the provisions of the ⁵Code of Criminal Procedure.

Searches how made.

17. ⁶[The officers referred to in sections 14 and 15] shall, upon notice given or request made, be legally bound to assist each other in carrying out the provisions of this Act.

Officers to assist each other.

18. ⁷[If any of the said officers], without reasonable ground of suspicion, enters or searches, or causes to be entered or searched, any building, vessel or place,

Vexatious entries, searches, seizures and arrests.

¹These words were inserted by sec. 9(2) of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

²The words "the Federal Railway Authority or any Government" were substituted for the words "the Government" by the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933), as adapted by para. 3 and Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

³See foot-note 2 on page 478, *ante*.

⁴These words were inserted by sec. 9(2) of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

⁵See now the Code of Criminal Procedure, 1898 (Act V of 1898).

⁶These words were substituted for the words "The officers of the several departments mentioned in section 14" by sec. 10 of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

⁷These words were substituted for the words "Any officer of any of the said departments who" by sec. 11(1), *ibid*.

(Sections 19—20A.)

or vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any opium or other thing liable to confiscation under this Act,

or vexatiously and unnecessarily detains, searches or arrests any person,

¹[he] shall, for every such offence, be punished with fine not exceeding five hundred rupees.

Issue of warrants.

19. The Collector of the district, Deputy Commissioner or other officer authorised by the ²[State Government] in this behalf, either personally or in right of his office, or a Magistrate, may issue his warrant for the arrest of any person whom he has reason to believe to have committed an offence relating to opium, or for the search, whether by day or night, of any building or vessel or place in which he has reason to believe opium liable to confiscation to be kept or concealed.

All warrants issued under this section shall be executed in accordance with the provisions of the ³Code of Criminal Procedure.

Power of State Government to authorize officers to investigate offences and grant bail.

⁴20. (1) The ²[State Government] may, by notification in the ⁵[Official Gazette], authorize any class of officers of the Excise, Police or Customs Department to investigate offences, and to grant bail to persons arrested, under this Act.

(2) The ²[State Government] may, from time to time, determine the form of the bail bond to be used.

Persons arrested how to be dealt with.

⁴20A. (1) When any person is arrested or any opium or other thing is seized under the provisions of this Act, the person making the arrest or seizure shall, if he is an officer of the Excise, Police or Customs Department, forthwith forward the person arrested or the thing seized to the nearest officer of his department empowered under section 20 unless he is himself so empowered.

(2) When such arrest or seizure is made by any officer referred to in section 14 or section 15 other than an officer of the Excise, Police or Customs Department, he shall forthwith forward the person arrested or the thing seized to the nearest officer of the Excise, Police or Customs Department empowered under section 20 and having jurisdiction in the case.

¹This word was inserted by sec 11(2), of the Opium (Bengal) Amendment) Act, 1933 (Ben. Act V of 1933).

²See foot-note 2 on page 478, *ante*.

³See now the Code of Criminal Procedure, 1898 (Act V of 1898).

⁴Sections 20 to 20J were substituted for the original section 20 by sec. 12 of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

⁵See foot-note 4 on page 479, *ante*.

of 1878.]

(Section 20B.)

(3) When any person is brought in custody before an officer empowered under section 20, or when such officer has himself arrested or procured the appearance by summons under section 20D of any person, he shall make such investigation as seems to him necessary, and shall either release such person or admit him to bail to appear, or if bail is not given, produce him or cause the officer-in-charge of the nearest police-station to produce him before a Magistrate having jurisdiction in the case :

Provided that if the investigation is not completed within twenty-four hours of the arrest, the said officer may take bail with or without security from the person arrested to appear on any subsequent date before himself and shall, if such bail is not given, forthwith forward the arrested person to the nearest Magistrate with a report of the case, and a request to detain him in custody for such period not exceeding fourteen days as may be necessary to complete the investigation and to order his production before the said officer when necessary for such investigation.

(4) The Magistrate to whom an arrested person is so forwarded, whether he has or has not jurisdiction to try the case, may, by order in writing stating the reasons therefor, authorize the detention of the arrested person in default of bail in such custody as he thinks fit for a term not exceeding fourteen days in the whole.

¹20B. (1) An officer empowered under section 20 may summon any person to appear before himself to give evidence, or to produce any document, necessary for the purposes of an investigation.

Power of investigating officer to summon witnesses.

(2) Such summons shall state whether the person summoned is required to give evidence or to produce a document or both, and shall specify a time and place for appearance.

(3) It shall be lawful for such officer instead of issuing a summons to proceed to the residence of any person whom by reason of sickness or other infirmity or by reason of rank or sex it may not seem proper to summon, and there require him to answer such questions as may be necessary for the purposes of the investigation.

(4) Any person examined in accordance with the provisions of sub-section (1) or sub-section (3) shall be bound to answer all questions relating to the investigations put to him by such officer other than questions the answer to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(5) The provisions of section 162 of the Code of Criminal Procedure, 1898, shall apply to the statements made by any person under this section.

(6) No oaths shall be administered to any such person.

Act V of
1898.

¹See foot-note 4 on page 486, *ante*.

[Act I

(Sections 20C—20G.)

Power of
investi-
gating
officer to
release
accused
when
evidence
deficient.

¹20C. If upon an investigation under this Act it appears to the officer in charge of such investigation that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate for trial.

Power of
certain
officers to
summon
suspected
persons.

¹20D. When any officer of the Excise, Police or Customs Department, not below such rank as may be prescribed by the ²[State Government] by notification in the ³[Official Gazette], has reasonable grounds for believing that any person has committed an offence under this Act, he may, after recording his reasons in writing, and either with or without previous investigation, summon such person to appear before him.

Summon-
ing
witnesses,
etc., how
to be
made.

¹20E. The provisions of the Code of Criminal Procedure, 1898, relating to summonses and compelling the appearance of persons summoned and the production of documents shall apply, as far as may be, in the case of any summons issued by an officer of the Excise, Police or Customs Department, empowered to issue a summons under this Act.

Act V of
1898.

Procedure
in case of
forfeiture
of bond.

¹20F. When it appears to an officer of the Excise, Police or Customs Department that a bond for appearance before himself has been forfeited, he shall forward the bond to the Magistrate having jurisdiction to try the offence of which the person bailed was accused, and the Magistrate shall deal with the matter in the manner provided by the Code of Criminal Procedure, 1898, for the forfeiture of bonds for appearance before his own court.

Jurisdic-
tion of
Magistrate
on receipt
of report
from
Excise
Officer,
etc.

¹20G. When an officer of the Excise, Police or Customs Department forwards in custody any person accused of an offence under this Act to the Magistrate having jurisdiction to try the case or admits any such person to bail to appear before such Magistrate, he shall submit a report setting forth the name of the accused person and the nature of the offence with which he was charged and the names of the persons who appear to be acquainted with the circumstances of the case, and shall send to such Magistrate any article which it may be necessary to produce before him. Upon receipt of such report the Magistrate, shall inquire into such offence and try the person accused thereof in like manner as if such report is a report in writing made by a police officer under clause (b) of sub-section (1) of section 190 of the Code of Criminal Procedure, 1898.

¹See foot-note 4 on page 486, *ante*.

²See foot-note 2 on page 478, *ante*.

³See foot-note 4 on page 479, *ante*.

of 1878.]

(Sections 20H—23.)

Act V of
1898.

¹20H. An officer of the Excise, Police or Customs Department acting under the provisions of section 20G shall have all the powers conferred by the Code of Criminal Procedure, 1898, on an officer in charge of a police-station for the purpose of causing the appearance before the Magistrate of persons acquainted with the circumstances of the case.

Attendance of witnesses before Magistrate.

¹20I. All officers in charge of police-stations shall take charge of and keep in safe custody, pending the orders of a Magistrate or an investigating officer of the Excise, Police or Customs Department, all articles seized under this Act which may be delivered to them, and shall allow any investigating officer who may accompany such articles to the police-station or who may be deputed for the purpose by his superior officer, to affix his seal to such articles and to take samples of and from them. All samples so taken shall also be sealed with the seal of the officer in charge of the police-station and with the seal of the accused or his agent if he is available. All such packets of samples shall be signed by the accused or his agent if he is available.

Police to take charge of articles seized.

¹20J. (1) Every Excise, Police or Customs officer making an investigation under this Act shall, day by day, enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him and a statement of the circumstances ascertained from day to day until the investigation is closed.

Diary of proceedings in investigation.

(2) The provisions of sub-section (2) of section 172 of the Code of Criminal Procedure, 1898, shall apply in the case of every such diary.

21. Whenever any officer makes any arrest or seizure under this Act, he shall, within ²[twenty-four hours] next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.

Report of arrests and seizures.

22. [*Procedure in cases of illegal poppy cultivation.*—Rep. by sec. 40 and Schedule II of the Dangerous Drugs Act, 1930 (II of 1930).

23. Any arrear of any fee or duty imposed under this Act or any rule made hereunder,

Recovery of arrears of fees, duties, etc.

and any arrear due from any farmer of opium-revenue ³[or any person licensed in this behalf under this Act],

¹See foot-note 4 on page 486, *ante*.

²These words were substituted for the words "forty-eight hours" by sec. 13 of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

³These words were inserted by sec. 14, *ibid*.

(Sections 24, 25 and Schedule.)

may be recovered from the person primarily liable to pay the same to the ¹[State Government] or from his surety (if any) as if it were an arrear of land-revenue.

Farmer
may
apply to
Collector
or
other
officer
to recover
amount
due to
him by
licensee.

24. When any amount is due to a farmer of opium-revenue from his licensee, in respect of a license, such farmer may make an application to the Collector of the district, Deputy Commissioner or other officer authorized by the ¹[State Government] in this behalf, praying such officer to recover such amount on behalf of the applicant ; and on receiving such application, such Collector, Deputy Commissioner or other officer may in his discretion recover such amount as if it were an arrear of land-revenue, and shall pay any amount so recovered to the applicant :

Provided that the execution of any process issued by such Collector, ²[Deputy Commissioner] or other officer for the recovery of such amount shall be stayed if the licensee institutes a suit in the Civil Court to try the demand of the farmer, and furnishes security to the satisfaction of such officer for the payment of the amount which such Court may adjudge to be due from him to such farmer :

Provided also that nothing contained in this section or done thereunder shall affect the right of any farmer of opium-revenue to recover by suit in the Civil Court or otherwise any amount due to him from such licensee.

Recovery
of penal-
ties due
under
bond.

25. When any person in compliance with any rule made hereunder, gives a bond for the performance of any duty or act, such duty or act shall be deemed to be a public duty, or an act in which the public are interested, as the case may be, within the meaning of the Indian Contract Act, 1872, section 74 ; and, upon breach of the condition of such bond by him, the whole sum named therein as the amount to be paid in case of such breach may be recovered from him as if it were an arrear of land-revenue.

Act IX of
1872.

SCHEDULE.

[ENACTMENTS REPEALED.]

Repealed by sec. 2 and Schedule I, Part I of the Amending Act, 1891 (XII of 1891).

¹The words "Provincial Government" were first substituted for the word "Government" by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²These words were substituted for the words "Deputy Collector" by sec. 2 and Schedule II, Part I, of the Amending Act, 1891 (XII of 1891).

Act XIX of 1879

(The Raipur and Khattra-Laws Act, 1879.)¹

REPEALED IN PART ... Act XII of 1891.

(29th October, 1879.)

An Act to amend the law in force in thanas Raipur and Khattra

Whereas the territory comprised in the *thana* of Raipur : 'including the independent police-outposts of Simlapal) and the *thana* of Khattra has been transferred from the district of Manbhūm to the district of Bankura ;

Preamble.

And whereas the said territory, when included in the district of Manbhūm, formed portion of the Chota Nagpur Division, which is a scheduled district under Act No. XIV of 1874 (the Scheduled Districts Act, 1874) ;

And whereas it is expedient that the law in force in the said territory should be the same as the law in force in the district of Bankura ; It is hereby enacted as follows :—

1. This Act may be called the Raipur and Khattra Laws Act 1879 : and it shall come into force at once.

Short
title
and
commen-
cement.

2 All enactments which on the first day of October, 1879, were in force in the district of Bankura and not in the said territory shall be deemed to have come into force in the said territory on that day ; and all enactments which on that day were in force in the said territory and not in the district of Bankura shall be deemed to have been repealed on and from that day in the said territory.

Laws of
Bankura
to apply.
Other
laws
repealed.

3. [Pending proceedings.]—Rep. by the Amending Act, 1891 (XII of 1891).

4. The said territory shall be deemed to have ceased to be a scheduled district on the said first day of October, 1879.

Territory
to cease
to be a
scheduled
district.

¹LEGISLATIVE PAPERS.—For Proceedings in Council, see *Supplement to Gazette of India*, 1879, page 1376.

LOCAL EXTENT.—This Act extends only to the *thanas* of Raipur and Khattra, in the district of Bankura—see the preamble.

Act XV of 1882
(THE PRESIDENCY SMALL CAUSE
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CHAPTER IV.

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of 1882.]

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[Act XV]**SECTIONS.**

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of 1882.]

CHAPTER XII.

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THE FOURTH SCHEDULE.—FEES FOR SUMMONSES AND OTHER PROCESSES.

THE FIFTH SCHEDULE.

Act No. XV of 1882

(The Presidency Small Cause Courts Act, 1882.)¹

	Act VII of 1892.
	Act III of 1899.
	Act IV of 1906.
	Act IX of 1912.
	Act XXIII of 1917.
AMENDED	Ben. Act IV of 1922.
	Ben. Act XX of 1932.
	Ben. Act VIII of 1934.
	West Ben. Act XI of 1955.
	West Ben. Act XVI of 1958.
	Act XII of 1891.
	Act VII of 1896.
	Act V of 1908.
REPEALED IN PART	Act XXXVIII of 1920.
	Act XII of 1927.
	Act I of 1938.
	West Ben. Act VII of 1948.
	Act I of 1895.
REPEALED IN PART AND AMENDED	Act VII of 1912.
	Act X of 1914.
	(a) The Government of India (Adaptation of Indian Laws) Order, 1937.
	(b) The Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948.
ADAPTED	(c) The Adaptation of Laws Order, 1950.
	(d) The Adaptation of Laws (No. 2) Order, 1956.

[17th March, 1882.]

*An Act to consolidate and amend the law relating to the Courts
of Small Causes established in the Presidency-towns.*

WHEREAS it is expedient to consolidate and amend the law relating to the Courts of Small Causes established in the towns of Calcutta, Madras and Bombay ; It is hereby enacted as follows—

Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called the Presidency Small Cause Courts Act, 1882 ; and it shall come into force on the first day of July, 1882.

Short title.
Com-
mence-
ment.

¹For Statement of Objects and Reasons, see the Gazette of India, 1880, Pt. V, page 376; for first Report of the Select Committee, see *ibid.*, 1881, Pt. V, page 381; for further Report of the Select Committee, see *ibid.*, 1882, Pt. V, page 3; for Proceedings in Council, see *ibid.*, Supplement, 1880, pages 1394 and 1433; *ibid.*, 1882, Supplement, page 204; and *ibid.*, 1882, Extra Supplement, page 43.

For portions of the Code of Civil Procedure extended to the Presidency Small Cause Court at Calcutta, see Schedule A to Rules of Practice, *Calcutta Gazette* of 1910, Part I, page 814.

(Chapter I. Preliminary.—Chapter II.—Constitution and Officers of the Court.—secs. 2—5)

But nothing herein contained shall affect the provisions of the Army Act ¹* * section 151, or the rights or liabilities of any person under any decree passed before that day.

44 & 45
Vict., c 58.

2. [Repeal of enactments.]—*Rep. by the Repealing Act, 1938 (I of 1938), sec. 2 and Sch. and the West Bengal Repealing and Amending Act, 1948 (West Ben. Act VII of 1948), sec. 3 and Second Sch.*

3. [Amendments of Acts.]—*Rep. by the Repealing Act, 1938 (I of 1938), sec. 2 and Sch. and the West Bengal Repealing and Amending Act, 1946 (West Ben. Act VII of 1948), sec. 3 and Second Sch.*

“Small Cause Court” and “Registrar” defined.

4. In this Act, “the Small Cause Court” means the Court of Small Causes constituted under this Act in the town of Calcutta, Madras or Bombay as the case may be, ⁸and the expression “Registrar” includes a Deputy Registrar.]

CHAPTER II.

CONSTITUTION AND OFFICERS OF THE COURT.

Courts of Small Causes established.

5. There shall be in each of the towns of Calcutta, Madras and Bombay a Court, to be called the Court of Small Causes of Calcutta, Madras or Bombay, as the case may be.

Court to be deemed under superintendence, etc., of High Court.

The Small Cause Court shall be deemed to be a Court subject to the superintendence of [the High Court at Calcutta,]³ Madras or Bombay, as the case may be, within the meaning of the Letters Patent, respectively, dated the twenty-eighth day of December, 1865, for such High Courts, and within the meaning of the ⁴Code of Civil Procedure ⁵[and to be a Court subordinate to the High Court within the meaning of section 6 of the Legal Practitioners Act, 1879.]

XIV of
1882.

XVIII of
1879.

¹The figures “1881” were repealed by sec. 2 and Sch. I of the Amending Act, 1891 (XII of 1891).

²These words were added by sec. 2 of the Presidency Small Cause Courts Act, 1899 (III of 1899).

³These words were substituted for the words “the High Court of Judicature at Fort William,” by sec. 3(i) of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1958 (West Ben. Act XVI of 1958).

⁴See now the Code of Civil Procedure, 1908 (Act V of 1908).

⁵These words were inserted by sec. 2 of the Presidency Small Cause Courts Act, 1899 (I of 1895).

⁶The words “and the High Court shall have, in respect of the Small Cause Court, the same powers as it has under the twenty-fourth and twenty-fifth of Victoria, Chapter 104, section 15, in respect of Courts subject to its appellate jurisdiction” were omitted by sec. 3(ii) of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1958 (West Bengal Act XVI of 1958).

of 1882.]

(Chapter II.—*Constitution and Officers of the Court.*—secs. 7—9.)

¹7. There shall be appointed from time to time a Chief Judge of the Small Cause Court and as many other Judges as the ²[State] Government thinks fit.

Appoint-
ment of
Judges.

8. The Chief Judge shall be the first of the Judges in rank and precedence.

Rank and
precedence
of Judges.

The other Judges shall have rank and precedence as the ³[State] Government may, from time to time, direct.

³8A. (1) During any absence of the Chief Judge or any Judge of the said Court, or during the period for which any Judge is acting as Chief Judge, the ²[State] Government may appoint any person, having ⁴[the requisite qualifications], to act as Chief Judge or Judge of the said Court, as the case may be.

Perform-
ance of
duties of
absent
Judge.

(2) Every person so appointed shall be authorized to perform the duties of the Chief Judge or a Judge of the said Court until the return of the absent Chief Judge or Judge, or of the Judge acting as Chief Judge, or until the ²[State] Government sees cause to cancel the appointment of such acting Chief Judge or Judge, as the case may be.

⁵9. (1) The High Court may, from time to time, by rules having the force of law,—

Procedure
and prac-
tice of
Small
Cause
Court.

(a) prescribe the procedure to be followed and the practice to be observed by the Small Cause Court either in supersession of or in addition to any provisions which were prescribed with respect to the procedure or practice of the Small Cause Court on or before the thirty-first day of December, 1894, in or under this Act or any other enactment for the time being in force; and

⁶[(aa) empower the Registrar to hear and dispose of undefended suits and interlocutory applications or matters, and]

(b) cancel or vary any such rule or rules.

¹Substituted for the original section by paragraph 3 and the First Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937.

²Substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

³Substituted by sec. 3 of the Presidency Small Cause Courts Act, 1899 (III of 1899) for the original sec. 8A which had been inserted by sec. 4 of the Presidency Small Cause Courts Act, 1895 (I of 1895).

⁴Substituted for the words "the qualifications required by section 7" by para. 3 and the First Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵Substituted for the original section by sec. 5 of the Presidency Small Cause Courts Act, 1895 (I of 1895).

⁶Inserted by sec. 4 of the Presidency Small Cause Courts Act, 1899 (III of 1899).

[Act XV]

(Chapter II.—*Constitution and Officers of the Court.*—secs. 10—14.)

Rules made under this section may provide, among other matters, for the exercise by one or more of the Judges of the Small Cause Court of any powers conferred on the Small Cause Court by this Act or any other enactment for the time being in force.

(2) The law, and any rules and declarations made, or purporting to be made, thereunder, with respect to procedure or practice, in force or treated as in force in the Small Cause Court on the thirty-first day of December, 1894, shall be in force, unless and until cancelled or varied by rules made by the High Court under this section.

Chief
Judge to
distribute
business
of Court.

10. Subject to such rules, the Chief Judge may, from time to time, make such arrangements as he thinks fit for the distribution of the business of the Court among the various Judges thereof.

Procedure
in case of
difference
of opinion.

11. Save as hereinafter otherwise provided, when two or more of the Judges sitting together differ on any question, the opinion of the majority shall prevail, and, if the Court is equally divided, the Chief Judge, if he is one of the Judges so differing, or, in his absence, the Judge first in rank and precedence of the Judges so differing, shall have the casting voice.

Seal to be
used.

12. The Small Cause Court shall use a seal of such form and dimensions as are for the time being prescribed by the ¹[State] Government.

Appoint-
ment of
Registrar
and other
officers.

²13. There shall be appointed an officer to be called the Registrar of the Court who shall be the chief ministerial officer of the Court; there shall also be appointed a Deputy Registrar and as many clerks, bailiffs and other ministerial officers as may be necessary for the administration of justice by the Court and for the exercise and performance of the powers and duties conferred and imposed on it by this Act or any other law for the time being in force.

The Registrar and other officers so appointed shall exercise such powers and discharge such duties, of ministerial nature, as the Chief Judge may, from time to time, by rule direct.

Registrar
may be in-
vested
with
powers
of a Judge
in suits
not ex-
ceeding
twenty
rupees.

14. The ¹[State] Government may invest the Registrar with the powers of a Judge under this Act for the trial of suits in which the amount or value of the subject-matter does not exceed twenty rupees. And, subject to the orders of the Chief Judge, any Judge of the Small Cause Court may, whenever he thinks fit, transfer from his own file to the file of the Registrar any suit which the latter is competent to try.

¹See foot-note 2 on page 501, *ante*.

²Substituted for the original section by para. 3 and the First Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1882,]

(Chapter II.—Constitution and Officers of the Court.—
Chapter III.—Law administered by the Court.—Chapter
IV.—Jurisdiction in respect of Suits.—sections 15—17.)

¹[Explanation.—For the purpose of this section an application for possession under section 41 shall be deemed to be a suit.]

15. No Judge or other officer appointed under this Act shall, during his continuance as such Judge or officer, either by himself or as a partner of any other person, practise or act, either directly or indirectly, as an advocate, attorney, vakil or other legal practitioner, or be concerned, either on his own account or for any other person, or as the partner of any other person, in any trade or profession.

Judge or other officer not to practise or trade.

XLV of
1860.

Any such Judge or officer so practising, acting or concerned shall be deemed to have committed an offence under section 168 of the Indian Penal Code.

Nothing herein contained shall be deemed to prohibit any such Judge or officer from being a member of any company incorporated or registered under Royal Charter, Letters Patent,
²[Act of Parliament of the United Kingdom or Central Act or Provincial Act or State Act.]

CHAPTER III.

LAW ADMINISTERED BY THE COURT.

16. All questions, other than questions relating to procedure or practice, which arise in suits or other proceedings under this Act in the Small Cause Court shall be dealt with and determined according to the law for the time being administered by the High Court in the exercise of its ordinary original civil jurisdiction.

Questions arising in suits, etc., under Act to be declared according to law administered by High Court.

CHAPTER IV.

JURISDICTION IN RESPECT OF SUITS

17. The local limits of the jurisdiction of each of the Small Cause Courts shall be the local limits for the time being of the ordinary original civil jurisdiction of the High Court.

Local limits of jurisdiction of Court.

¹Added by sec. 6 of the Presidency Small Cause Courts Act, 1895 (I of 1895).

²The words "Act of Parliament of the United Kingdom or Central Act or Provincial Act or Act of the Legislature of a Part A State or a Part C State" were originally substituted for the words "Act of Parliament or Act of the Central Legislature or any Legislature established in a Province of India" by para. 3 and the First Schedule of the Adaptation of Laws Order, 1950. Thereafter the words "State Government" were substituted for the words "Act of the Legislature of a Part A State or a Part C State" by para. 3 and the Schedule of the Adaptation of Laws (No. 2) Order, 1956.

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In section 18,—

- (1) for the words "does not exceed two thousand rupees", substitute the words "does not exceed five thousand rupees";
- (2) in *Explanation I*, for the words "not exceeding two thousand rupees", substitute the words "not exceeding five thousand rupees".

(Substituted by West Ben. Act XXXII of 1969, section 3.)

[No. 8, dated the 1st October, 1973.]

local limits; or

- (c) any of the defendants at the time of the institution of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, within such local limits, and either the leave of the Court has been given before the institution of the suit, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution:

¹[Provided that where the cause of action has arisen wholly within the local limits aforesaid, and the Court refuses to give leave for the institution of the suit, it shall record in writing its reasons for such refusal.]

Explanation I.—When in any suit the sum claimed is, by a set-off admitted by both parties, reduced to a balance not exceeding two thousand rupees the Small Cause Court shall have jurisdiction to try such suit.

Explanation II.—Where a person has a permanent dwelling at one place and also a lodging at another place for a temporary purpose only, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary lodging.

Explanation III.—A Corporation or Company shall be deemed to carry on business at its sole or principal office in ²[India] or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

¹Added by sec. 7 of the Presidency Small Cause Courts Act, 1895 (I of 1895).

²The words "a Part A State or a Part C State" were originally substituted for the words "the Provinces," by para. 3 and the First Schedule of the Adaptation of Laws Order, 1950. Thereafter the word "India" was substituted for the words "a Part A State or a Part C State" by para. 3 and the Schedule to the Adaptation of Laws (No. 2) Order, 1956.

of 1882.]

(Chapter IV.—Jurisdiction in respect of Suits.—secs. 18A, 19.)

⁴18A. The Small Cause Court may allow a plaintiff at or before the first hearing of a suit in which a joint and several liability is alleged on a cause of action arising either wholly or in part within the local limits of the jurisdiction of the Court to abandon the suit as against any defendant who does not reside or carry on business or personally work for gain within such local limits, and to sue for a decree against such defendants only as do so reside, carry on business or personally work for gain.

Plaintiff may abandon suit against defendant resident out of jurisdiction.

19. The Small Cause Court shall have no jurisdiction in—

(a) suits concerning the assessment or collection of the revenue ;

²[(b) suits concerning any act done by or by order of the Central Government, ³ * * * * * or the ⁴[State] Government ;

Suits in which Court has no jurisdiction.

(c) suits concerning any act ordered or done by any Judge or judicial officer in the execution of his office, or by any person in pursuance of any judgment or order of any Court or any such Judge or judicial officer ;

(d) suits for the recovery of immovable property ;

(e) suits for the partition of immovable property ;

(f) suits for the foreclosure or redemption of a mortgage of immovable property ;

(g) suits for the determination of any other right to or interest in immovable property ;

(h) suits for the specific performance or rescission of contracts ;

(i) suits to obtain an injunction ;

(j) suits for the cancellation or rectification of instruments ;

(k) suits to enforce a trust ;

(l) suits for a general average loss and suits on policies of insurance on sea-going vessels ;

(m) suits for compensation in respect of collisions on the high seas ;

¹Inserted by sec. 8 of the Presidency Small Cause Courts Act, 1895 (I of 1895).

²Paragraph (b) was substituted for the following paragraph, namely:—

“(b) suits concerning any act done by or by Order of the Central Government, the Crown Representative or the Provincial Government.”

by sec. 3 and the First Schedule of the Government of India (Adaptation of Indian Laws) Order, 1937.

³The words “the Crown Representative” were omitted by para. 3 and the First Schedule to the Adaptation of Laws Order, 1950.

⁴See foot-note 2 on page 501, *ante*.

[Act XV.]

(Chapter IV.—Jurisdiction in respect of Suits.—sec. 19A.)

- (n) suits for compensation for the infringement of a patent, copyright or trade-mark ;
- (o) suits for a dissolution of partnership or for an account of partnership-transactions ;
- (p) suits for account of property and its due administration under the decree of the Court ;
- (q) suits for compensation for libel, slander, malicious prosecution, adultery or breach of promise of marriage ;
- (r) suits for the restitution of conjugal rights ^{1****} or for a divorce ;
- (s) suits for declaratory decrees ;
- (t) suits for possession of a hereditary office ;
- (u) suits against Sovereign Princes or Ruling Chiefs, or against Ambassadors or Envoys of Foreign States ;
- (v) suits on any judgment of a High Court ;
- (w) suits the cognizance whereof by the Small Cause Court is barred by any law for the time being in force.

**Return of
plaint.**

²19A. Whenever the Court finds that for want of jurisdiction it cannot finally determine the question at issue in the suit, it may at any stage of the proceedings return the plaint to be presented to a Court having jurisdiction to determine the question. When the Court so returns a plaint, it shall comply with the provisions of the second paragraph of section 57 of the Code of Civil Procedure ³ and make such order with respect to costs as it may think just, and the Court shall for the purposes of the Indian Limitation Act, 1877, ⁴ be deemed to have been unable to entertain the suit by reason of defect of jurisdiction. When a plaint so returned is afterwards presented to a High Court, credit shall be given to the plaintiff for the amount of the court-fee paid in the Small Cause Court in respect of the plaint in the levy of any fees which according to the practice of the High Court are credited to the Government.

XIV of
1882.XV of
1877.

¹The words "for the recovery of a wife" were repealed by sec. 3 and Sch. II of the Repealing and Amending Act, 1914 (X of 1914).

²Inserted by sec. 9 of the Presidency Small Cause Courts Act, 1895 (I of 1895).

³See now the Code of Civil Procedure, 1908 (Act V of 1908), Sch. I, Order VII, rule 10(2).

⁴See now the Indian Limitation Act, 1908.

of 1882.]

(Chapter IV.—Jurisdiction in respect of Suits.—secs. 20—22.)

^{120.} [Court may by consent try suits beyond pecuniary limits of jurisdiction.—Omitted by sec. 4 of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1958 (West Ben. Act XVI of 1958).]

West Ben.
Act XXI
of 1953.

^{221.} Notwithstanding anything contained in this Act or the City Civil Court Act, 1953, all suits to which an officer of the Small Cause Court is, as such, a party except suits in respect of property taken in execution of its process, or the proceeds or value thereof, may be instituted in the Calcutta City Civil Court at the election of the plaintiff.

Suits by
and
against
officers of
Court.

^{222.} [Costs when plaintiff sues in High Court in other cases cognizable by Small Cause Court.—Omitted by sec. 6 of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1958 (West Ben. Act XVI of 1958).]

¹The section which was omitted reads as follows, namely:—

“Court may by consent try suits beyond pecuniary limits of jurisdiction.—When the parties to a suit, which, if the amount or value of the subject-matter thereof did not exceed two thousand rupees, would be cognizable by the Small Cause Court, have entered into an agreement in writing that the Small Cause Court shall have jurisdiction to try such suit, the Court shall have jurisdiction to try the same, although the amount or value of the subject-matter thereof may exceed two thousand rupees.

Every such agreement shall be filed in the Small Cause Court, and, when so filed, the parties to it shall be subject to the jurisdiction of the Court, and shall be bound by its decision in such suit.”

²This new section was substituted by sec. 5 of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1958 (West Ben. Act XVI of 1958), for the following existing section, namely:—

“All suits to which an officer of the Small Cause Court is, as such, a party, except suits in respect of property taken in execution of its process, or the proceeds or value thereof and all suits whereof the amount or value of the subject-matter exceeds one thousand rupees may be instituted in the High Court at the election of the plaintiff as if this Act had not been passed.”

³The section which was omitted reads as follows, namely:—

“Costs when plaintiff sues in High Court in other cases cognizable by Small Cause Court.—If any suit cognizable by the Small Cause Court, other than a suit to which section 21 applies, is instituted in the High Court, and if in such suit the plaintiff obtains, in the case of a suit founded on contract, a decree for any matter of an amount or value less than one thousand rupees, and in the case of any other suit a decree for any matter of an amount or value of less than three hundred rupees, no cost shall be allowed to the plaintiff;

and if in any such suit the plaintiff does not obtain a decree, the defendant shall be entitled to his costs as between attorney and client.

The foregoing rules shall not apply to any suit in which the Judge who tries the same certifies that it was one fit to be brought in the High Court.”

[Act XV

(Chapter V.—Procedure in Suits.—secs. 23—26.)

CHAPTER V.

PROCEDURE IN SUITS.

23. [*Portions of Civil Procedure Code extending to Court.*]
—Rep. by the Presidency Small Cause Courts Act, 1895 (I of 1895),
sec. 12.

No written
statement
except in
cases of
set-off.

24. Except in cases of set-off under the Code of Civil Procedure, section 111,¹ no written statement shall be received unless required by the Court.

XIV of
1882.

Return of
documents
admitted
in
evidence.

25. When a period of eight days from the decision of a suit has expired without any application for a new trial or re-hearing of such suit having been made, or when any such application has been made within such period and such application has been refused, or the new trial or re-hearing (as the case may be) has ended, any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record, shall, unless the document is impounded under section 143 of the Code of Civil Procedure,² be entitled to receive back the same :

Provided that a document may be returned at any time before any of such events on such terms as the Court may direct : provided also that no document shall be returned which, by force of the decree, has become void or useless.

On the return of a document which has been admitted in evidence, a receipt shall be given, by the party receiving it, in a receipt-book to be kept for the purpose.

Compensation payable by plaintiff to defendant in certain cases.

26. In any suit in which the defendant appears and does not admit the claim, and the plaintiff does not obtain a decree for the full amount of his claim, the Small Cause Court may in its discretion order the plaintiff to pay to the defendant, by way of satisfaction for his trouble and attendance, such sum as it thinks fit.

When any claim preferred, or objection made, under section 278 of the Code of Civil Procedure³ is disallowed, the Small Cause Court may in its discretion order the person preferring or making such claim or objection to pay to the decree-holder, or to the judgment-debtor, or to both by way of satisfaction as aforesaid, such sum or sums as it thinks fit.

¹See now the Code of Civil Procedure, 1908 (Act V of 1908), Sch. I, Order VIII, rule 6.

²See now Order XIII, rule 8, *ibid.*

³See now Order XXI, rule 58, *ibid.*

of 1882.]

(Chapter V.—*Procedure in Suits.*—secs. 27—30.)

And when any claim or objection is allowed the Court may award such compensation by way of damages to the claimant or objector as it thinks fit ; and the order of the Court awarding or refusing such compensation shall bar any suit in respect of injury caused by the attachment.

Any order under this section may, in default of payment of the amount payable thereunder, be enforced by the person in whose favour it is made against the person against whom it is made as if it were a decree of the Court.

27. Whenever the Small Cause Court issues a warrant for the arrest of a judgment-debtor or the attachment of his property, the decree-holder, or some other person on his behalf, shall accompany the officer of the Court entrusted with the execution of such warrant, and shall point out to such officer the judgment-debtor or the property to be attached, as the case may be,

Decree-holder to accompany officer executing warrant

28. When the judgment-debtor under any decree of the Small Cause Court is a tenant of immovable property, anything attached to such property, and which he might before the termination of his tenancy lawfully remove without the permission of his landlord, shall, for the purpose of the execution of such decree ¹[and for the purpose of deciding all questions arising in the execution of such decree,] be deemed to be movable property, and may, if sold in such execution, be severed by the purchaser, but shall not be removed by him from the property until he has done to the property whatever the judgment-debtor would have been bound to do to it if he had removed such thing.

Things attached to immovable property and removable by tenant to be deemed movable in execution.

29. Whenever any judgment-debtor, who has been arrested or whose property has been seized in execution of a decree of the Small Cause Court, offers security to the satisfaction of such Court for payment of the amount which he has been ordered to pay and the costs, the Court may order him to be discharged or the property to be released.

Discharge of judgment-debtor on sufficient security.

30. Whenever it appears to the Small Cause Court that any judgment-debtor under its decree is unable, from sickness, poverty or other sufficient cause, to pay the amount of the decree, or, if such Court has ordered the same to be paid in instalments, the amount of any instalment thereof, it may, from time to time, for such time and upon such terms as it thinks fit, suspend the execution of such decree and discharge the debtor, or make such order as it thinks fit.

Court may in certain cases suspend execution of decree.

¹Inserted by sec. 2 of the Presidency Small Cause Courts Act, 1906 (IV of 1906).

(Chapter V.—Procedure in Suits.—secs. 31—34.)

Execution
of decree
of Small
Cause
Court by
other
Courts.

31. If the judgment-debtor under any decree of the Small Cause Court has not, within the local limits of its jurisdiction, movable property sufficient to satisfy the decree, the Court may, on the application of the decree-holder, send the decree for execution—

- (a) in the case of execution against immovable property situate within such local limits—¹[to the Madras City Civil Court ²(or the Calcutta City Civil Court) or the High Court of Judicature at * * * Bombay, as the case may be];
- b) in all other cases—to any Civil Court within the local limits of whose jurisdiction such judgment-debtor, or any movable or immovable property of such judgment-debtor, may be found.

Procedure
when
decree
trans-
ferred.

The procedure prescribed by the Code of Civil Procedure⁴ for the execution of decrees by Courts other than those which made them shall be the procedure followed in such cases.

Minors
may sue
in certain
cases as if
of full age.

32. Notwithstanding anything contained in the Code of Civil Procedure⁴ as applied by this Act, any minor may institute a suit for any sum of money, not exceeding five hundred rupees, which may be due to him under section 70 of the Indian Contract Act, 1872, for wages or piece-work or for work as a servant, in the same manner as if he were of full age.

IX of
1872.

Power to
delegate
non-judi-
cial
duties.

33. Any non-judicial or quasi-judicial act which the Code of Civil Procedure⁴ as applied by this Act requires to be done by a Judge, and any act which may be done by a Commissioner appointed to examine and adjust accounts under section 394 of that Code as so applied, may be done by the Registrar of the Small Cause Court or by such other officer of that Court as that Court may, from time to time, appoint in this behalf.

The High Court may, from time to time, by rule, declare what shall be deemed to be non-judicial and quasi-judicial acts within the meaning of this section.

Registrar
to hear
and deter-
mine suits
like a
Judge.

34. The suits cognizable by the Registrar under section 14 shall be heard and determined by him in like manner in all respects as a Judge of the Court might hear and determine the same :

¹Substituted by the Madras City Civil Court Act, 1892 (VII of 1892).

²These words were inserted by sec. 7(i) of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1958 (West Ben. Act XVI of 1958).

³The words "Fort William or" were omitted by sec. 7(ii), *ibid.*

⁴See now the Code of Civil Procedure, 1908 (Act V of 1908).

(Chapter V.—*Procedure in Suits*.—Chapter VI.—*New Trials and Appeals*.—secs. 35—38.)

Provided that, subject to the control of the Chief Judge, any Judge of the Court may, whenever he thinks fit, transfer to his own file any suit on the file of the Registrar.

35. The Registrar may receive applications for the execution of decrees of any value passed by the Court, and may commit and discharge judgment debtors, and make any order in respect thereof which a Judge of the Court might make under this Act.

Registrar may execute all decrees with the same powers as a Judge.

36. Every decree and order made by the Registrar in any suit or proceeding shall be subject to the same provisions in regard to new trial as if made by a Judge of the Court.

Decrees and orders of Registrar to be subject to new trial as if made by a Judge.

CHAPTER VI.

NEW TRIALS AND APPEALS.

37. Save as otherwise provided by this Chapter or by any other enactment for the time being in force, every decree and order of the Small Cause Court in a suit shall be final and conclusive.

General finality of decrees and orders of Small Cause Court.

38. Where a suit has been contested, the Small Cause Court may, on the application of either party, made within eight days from the date of the decree or order in the suit (not being a decree passed under section 522 of the ²Code of Civil Procedure) order a new trial to be held, or alter, set aside or reverse the decree or order, upon such terms as it thinks reasonable, and may, in the meantime, stay the proceedings.

New trial of contested cases.

Explanation.—Every suit shall be deemed to be contested in which the decree is made otherwise than by consent of or in default of appearance by the defendant.

¹Substituted for the original Chapter VI, by sec. 13 of the Presidency Small Cause Courts Act, 1895 (I of 1895).

²See now the Code of Civil Procedure, 1908 (Act V of 1908), Sch. II, sec. 16.

[Act XV]

(Chapter VI.—New Trials and Appeals.—secs. 39, 40.)

¹39. [*Removal of certain causes into High Court.—Omitted by sec. 8 of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1958 (West Ben. Act XVI of 1958)*].

²40. [*Rules with respect to suits removed under the last foregoing section.—Omitted by sec. 9 of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1958 (West Ben. Act XVI of 1958)*].

¹The section which was omitted reads as follows, namely:—

“Removal of certain causes into High Court.—(1) In any suit instituted in a Small Cause Court in which the amount or value of the subject-matter exceeds the sum of one thousand rupees, the defendant or any one of the defendants may, before the day fixed by the summons for the appearance of the defendant or within eight days after the service of the summons on him, whichever period shall last expire, apply *ex parte* on an affidavit setting forth the facts on which he relies for his defence to a Judge of the High Court for an order removing the cause into the High Court.

(2) Unless the Judge is of opinion that the application has been made solely for the purpose of delay, the applicant shall be entitled to such order as of right:

Provided that the removal directed by such order shall, unless the Judge otherwise directs, be conditional upon the applicant giving security, to the approval of the Judge, within a reasonable time to be prescribed in the order for the payment of the amount claimed and of the costs which may become payable by him to the plaintiff in respect of the said suit.

(3) If the applicant fail or neglect to complete the required security (if any) within the prescribed time (if any), the said order shall be discharged and the suit shall proceed in the Small Cause Court as if such order had never been made.

(4) If the plaintiff in any case which has been removed under this section into the High Court has abandoned a portion of his claim in order to be able to bring the suit within the jurisdiction of a Small Cause Court, he shall be permitted to revive the portion of his claim so abandoned.”

²The section which was omitted reads as follows, namely:—

“Rules with respect to suits removed under the last foregoing section.—(1) When a suit has been removed into the High Court under the last foregoing section, it shall be heard and disposed of by such Court in the exercise of its original jurisdiction, and the said Court shall have all the same powers and jurisdiction in respect thereof as if it had been originally instituted in such Court.

(2) In every suit so removed as aforesaid the affidavit filed under section 39, sub-section (1), shall be treated as a written statement of the defendant tendered under section 110 of the Code of Civil Procedure (XIV of 1882), unless the Court shall otherwise order.

(3) In every suit so removed as aforesaid credit shall be given to the plaintiff for the amount of the court-fee paid in the Small Cause Court in respect of the plaint in the levy of any fees which according to the practice of the High Court are payable to the Government.”

of 1882.]

(Chapter VII.—Recovery of Possession of Immovable Property.—secs. 41—43.)

CHAPTER VII.

RECOVERY OF POSSESSION OF IMMOVABLE PROPERTY.

Page 513—

person has had possession of any Summons against

In section 41, for the words "two thousand rupees", substitute the words "five thousand rupees".

(Substituted by West Ben. Act XXXII of 1969, section 4.)

[No. 8, dated the 1st October, 1973.]

Price—75 P.

and such tenant or occupier or any person holding under or by assignment from him (hereinafter called the occupant) refuses to deliver up such property in compliance with a request made to him in this behalf by such other person,

such other person (hereinafter called the applicant) may apply² to the Small Cause Court for a summons against the occupant, calling upon him to show cause, on a day therein appointed, why he should not be compelled to deliver up the property.

of 1882. 42. The summons shall be served on the occupant in the manner provided by the Code of Civil Procedure³ for the service of a summons on a defendant. Service of summons.

43. If the occupant does not appear at the time appointed and show cause to the contrary, the applicant shall, if the Small Cause Court is satisfied that he is entitled to a apply under section 41, be entitled to an order addressed to a bailiff of the Court directing him to give possession of the property to the applicant on such day as the Court thinks fit to name in such order. Order for possession.

Explanation.—If the occupant proves that the tenancy was created or permission granted by virtue of a title which determined previous to the date of the application, he shall be deemed to have shown cause within the meaning of this section.

²Substituted for the word "one" by sec. 2 of the Presidency Small Cause Courts (Amendment) Act, 1912 (IX of 1912).

¹For the fee on such application, see sec. 71, *infra*.

³See now the Code of Civil Procedure, 1908 (Act V of 1908).

(Chapter VII.—Recovery of Possession of Immovable Property.—secs. 44—46.)

Such order to justify bailiff entering on property and giving possession. Bar to proceedings against Judge or officer for issuing, etc., order or summons.

44. Any such order shall justify the bailiff to whom it is addressed in entering after the hour of six in the morning and before the hour of six in the afternoon upon the property named therein, with such assistants, as he thinks necessary, and giving possession of such property to the applicant ; and no suit or prosecution shall be maintainable against any Judge or officer of the Small Cause Court by whom any such order as aforesaid was issued, or against any bailiff or other person by whom the same was executed, or by whom any such summons as aforesaid was served, for the issue, execution or service of any such order or summons, by reason only that the applicant was not entitled to the possession of the property.

Applicant, if entitled to possession, not to be deemed trespasser for any error in proceedings.

45. When the applicant, at the time of applying for any such order as aforesaid, was entitled to the possession of such property, neither he nor any person acting in his behalf shall be deemed, on account of any error, defect or irregularity in the mode of proceeding to obtain possession thereunder, to be a trespasser ; but any person aggrieved may bring a suit for the recovery of compensation for any damage which he has sustained by reason of such error, defect or irregularity :

Occupant may sue for compensation.

when no such damage is proved, the suit shall be dismissed ; and when such damage is proved but the amount of the compensation assessed by the Court does not exceed ten rupees, the Court shall award to the plaintiff no more costs than compensation, unless the Judge who tries the case certifies that in his opinion full costs should be awarded to the plaintiff.

Liability of applicant obtaining order when not entitled.

46. Nothing herein contained shall be deemed to protect any applicant obtaining possession of any property under this Chapter from a suit by any person deeming himself aggrieved thereby, when such applicant was not at the time of applying for such order as aforesaid entitled to the possession of such property.

Application for order in such case an act of trespass.

And when the applicant was not, at the time of applying for any such order as aforesaid, entitled to the possession of such property the application for such order, though no possession is taken thereunder, shall be deemed to be an act of trespass committed by the applicant against the occupant.

of 1882.]

(Chapter VII.—*Recovery of Possession of Immovable Property.*
secs. 47—49.)

47. ¹If, within twenty-one days from the date of service under section 42 of a summons on the occupant or where the summons has not been duly served, from the date of the knowledge of the proceedings under section 41 the occupant binds himself, with two sureties, in a bond for such amount as the Small Cause Court thinks reasonable, having regard to the value of the property and the probable costs of the suit next hereinafter mentioned, to institute ²* * * a suit in the High Court ³[or the Calcutta City Civil Court, as the case may be] against the applicant, for compensation for trespass and to pay all the costs of such suit in case he does not prosecute the same or in case judgment therein is given for the applicant, the Small Cause Court shall ⁴[make an order staying the proceedings on the application made under section 41 until such suit is disposed of :

Stay of proceedings on occupant giving security to bring suit against applicant.

Provided that an order of stay made under this section shall be vacated if the occupant fails to institute such suit within twenty-one days from the date of the order.]

If the occupant obtains a decree in any such suit against the applicant, such decree shall supersede the order (if any) made under section 43.

Nothing contained in section 22 shall apply to suits under this section.

48. In all proceedings under this Chapter, the Small Cause Court shall, as far as may be and except as herein otherwise provided, follow the procedure prescribed for a Court of first instance by the ⁵Code of Civil Procedure.

Proceedings to be regulated by Code of Civil Procedure.

49. Recovery of the possession of any immoveable property under this Chapter shall be no bar to the institution of a suit in ⁶[any Court having jurisdiction] for trying the title thereto.

Recovery of possession no bar to suit to try title.

¹These words were substituted for the words "Whenever on an application being made under section 41 " by sec. 3(1) of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1955 (West Ben. Act XI of 1955).

²The words "without delay" were omitted by sec. 3(2), *ibid.*

³These words were inserted by sec. 10 of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1958 (West Ben. Act XVI of 1958).

⁴These words were substituted for the words "stay the proceedings on such application until such suit is disposed of " by sec. 3(3) of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1955 (West Ben. Act XI of 1955).

⁵See now the Code of Civil Procedure, 1908 (Act V of 1908).

⁶These words were substituted for the words "the High Court " by sec. 11 of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1958 (West Ben. Act XVI of 1958).

(Chapter VIII.—Distresses.—secs. 50—54.)

CHAPTER VIII.

DISTRESSES.

Local extent of Chapter. Saving of certain rents.

50. This Chapter extends to every place within the local limits of the ordinary original civil jurisdictions of the High Courts ¹[at Calcutta], Madras and Bombay. But nothing contained in this Chapter applies—

(a) to any rent due to Government ;

(b) to any rent which has been due for more than twelve months before the application mentioned in section 53.

Appointment of bailiffs and appraisers.

51. Four or more persons shall be appointed bailiffs and appraisers for the purposes of this Chapter.

Appointees to be public servants.

52. The persons so appointed ³* * * shall be deemed to be public servants within the meaning of the Indian Penal Code.

XLV of 1860.

Application for distress-warrant.

53. Any person claiming to be entitled to arrears of rent of any house or premises to which this Chapter extends, or his duly constituted attorney, may apply to any Judge of the Small Cause Court, or to the Registrar of the Small Cause Court, for such warrant as is hereinafter mentioned.

The application shall be supported by an affidavit or affirmation to the effect of the form (marked A) in the third schedule hereto annexed.

Issue of distress-warrant.

54. The Judge or Registrar may thereupon issue a warrant under his hand and seal and returnable within six days, to the effect of the form (marked B) contained in the same schedule, addressed to any one of such bailiffs.

The Judge or Registrar may at his discretion, upon personal examination of the person applying for such warrant, decline to issue the same.

¹These words were substituted for the words "of Judicature at Fort William," by sec. 12 of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1958 (West Ben. Act XVI of 1958).

²Substituted for the original section by para. 3 and the First Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937.

³The words "shall give security, to be approved by the said Judges, faithfully to discharge the duties of their office, and they" were omitted, *ibid*.

of 1882.]

(Chapter VIII.—Distresses.—secs. 55—59.)

55. Every distress under this Chapter shall be made after sunrise and before sunset, and not at any other time. Time for distress.

56. The bailiff directed to make the distress may force open any stable, outhouse or other building, and may also enter any dwelling-house, the outer door of which may be open, and may break open the door of any room in such dwelling-house for the purpose of seizing property liable to be seized under this Chapter : What places bailiff may force open.

Provided that he shall not enter or break open the door of any room appropriated for the *zenana* or residence of women, which by the usage of the country is considered private.

57. In pursuance of the warrant aforesaid the bailiff shall seize the movable property found in or upon the house or premises mentioned in the warrant and belonging to the person from whom the rent is claimed (hereinafter called the debtor), or such part thereof as may, in the bailiff's judgment, be sufficient to cover the amount of the said rent, together with the costs of the said distress : Property which may be seized.

Provided that the bailiff shall not seize—

- (a) things in actual use ; or
- (b) tools and implements not in use, where there is other movable property in or upon the house or premises sufficient to cover such amount and costs ; or
- (c) the debtor's necessary wearing apparel ; or
- (d) goods in the custody of the law.

58. The bailiff may impound or otherwise secure the property so seized in or on the house or premises chargeable with the rent. Impounding distress.

59. On seizing any property under section 57 the bailiff shall make an inventory of such property and shall give a notice in writing to the effect of the form (marked C) in the third schedule hereto annexed to the debtor, or to any other person upon his behalf in or upon the said house or premises. Inventory. Notice of intended appraisement and sale.

The bailiff shall, as soon as may be, file in the Small Cause Court copies of the said inventory and notice. Copies of inventory and notice to be filed.

(Chapter VIII.—Distresses.—secs. 60—62.)

**Applica-
tion to dis-
charge or
suspend
warrant.**

60. The debtor or any other person alleging himself to be the owner of any property seized under this Chapter, or the duly constituted attorney of such debtor or other person, may, at any time within five days from such seizure, apply to any Judge of the said Court to discharge or suspend the warrant, or to release a distrained article, and such Judge may discharge or suspend such warrant or release such article accordingly, upon such terms as he thinks just,

and any of the Judges of the said Court may in his discretion give reasonable time to the debtor to pay the rent due from him.

Upon any such application, the costs attending it and attending the issue and execution of the warrant shall be in the discretion of the Judge, and shall be paid as he directs.

**Claim to
goods dis-
trained
made by a
stranger.**

61. If any claim is made to, or in respect of, any property seized under this Chapter, or in respect of the proceeds or value thereof, by any person not being the debtor, the Registrar of the Small Cause Court, upon the application of the bailiff who seized the property, may issue a summons calling before the Court the claimant and the person who obtained the warrant.

And thereupon any suit which may have been brought in the High Court ¹[or the Calcutta City Civil Court, as the case may be,] in respect of such claim shall be stayed, and any Judge of the High Court, ²[or of the Calcutta City Civil Court, as the case may be,] on proof of the issue of such summons and that the property was so distrained, may order the plaintiff to pay the costs of all proceedings in such suit after the issue of such summons.

And a Judge of the Small Cause Court shall adjudicate upon such claim and make such order between the parties in respect thereof and of the costs of the proceedings as he thinks fit ;

and such order shall be enforced as if it were an order made in a suit brought in such Court.

The procedure in Small Cause Courts in cases under this section shall conform, as far as may be, to the procedure in an ordinary suit in such Courts.

**Power to
award
compensa-
tion to
debtor or
claimant.**

62. In any case under section 60 or section 61 the Judge by whom the case is heard may award such compensation by way of damages to the applicant or claimant (as the case may be) as the Judge thinks fit,

¹These words were inserted by sec. 13(i) of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1958 (West Ben. Act XVI of 1958).

²These words were inserted by sec. 13(ii), *ibid*.

of 1882.]

(Chapter VIII.—Distresses.—secs. 63—65.)

and may for that purpose make any inquiry he thinks necessary ;

and the order of the Judge awarding or refusing such compensation shall bar any suit for the recovery of compensation for any damage caused by the distress.

¹63. [Power to transfer to High Court cases involving more than one thousand rupees—Omitted by sec. 14 of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1958 (West Ben. Act XVI of 1958)].

64. In default of any order to the contrary by a Judge of the Small Cause Court, ²* * *any two of the said bailiffs may, at the expiration of five days from a seizure of property under this Chapter, appraise the property so seized, and give the debtor notice in writing to the effect of the form (marked D) in the third schedule hereto annexed.

Appraise-
ment.
Notice of
sale.

The bailiffs shall file in the Small Cause Court a copy of every notice given under this section.

65. In default of any such order to the contrary, the distrained property shall be sold on the day mentioned in such notice, and the said bailiffs shall, on realizing the proceeds, pay over the amount thereof to the Registrar of the Small Cause Court ; and such amount shall be applied first in payment of the costs of the said distress and then in satisfaction of the debt ; and the surplus, if any, shall be returned to the debtor :

Sale.
Applica-
tion of
proceeds.

¹The section which was omitted reads as follows, namely:—

“ Power to transfer to High Court cases involving more than one thousand rupees.—In any case under section 60 or section 61, if the value of the subject-matter in dispute exceeds one thousand rupees, the applicant or claimant may apply to the High Court to transfer the case to itself, and the High Court, on being satisfied that it is expedient that the case should be disposed of by itself, may direct the case to be transferred accordingly, and may thereupon alter or set aside any order passed in the case by a Judge of the Small Cause Court, and may make such order therein as the High Court thinks fit.

Every application under this section shall be made within seven days from the date of the seizure of the subject-matter in dispute.

In granting applications under this section, the High Court may impose such terms as to payment of, or giving security for, costs or otherwise as it thinks fit.

The procedure in cases transferred under this section shall conform, as far as may be, to the procedure in suits before the High Court in the exercise of its ordinary original civil jurisdiction; and orders made under this section may be executed as if they were made in the exercise of such jurisdiction, and every such order awarding or refusing compensation shall bar any suit for the recovery of compensation for any damage caused by the distress which gave rise to the case wherein such order was made.”

²The words “ or by the High Court.” were omitted by sec. 15 of the Presidency Small Cause Courts (West Bengal Amendment) Act, 1958 (West Ben. Act XVI of 1958).

(Chapter VIII.—Distresses.—Chapter IX.—References to High Court.—secs. 66—69.)

Provided that the debtor may direct that the sale shall take place in any other manner, first giving security for any extra costs thereby occasioned.

Costs of
distresses.

66. No costs of any distress under this Chapter shall be taken or demanded except those mentioned in the part (marked E) of the third schedule hereto annexed,

Account of
costs and
proceeds.

67. The Registrar of the Small Cause Court shall keep a book in which all sums received as costs upon distresses made under this Chapter, and all sums paid as remuneration to the said bailiffs, and all contingent charges incurred in respect of such distresses, shall be duly entered.

He shall also enter in the said book all sums realised by sale of the property distrained and paid over to landlords under the provisions of this Chapter.

Bar of dis-
tresses ex-
cept under
this
Chapter.
Penalty for
making
illegal
distresses.

68. No distress shall be levied for arrears of rent except under the provisions of this Chapter ;

and any person, except a bailiff appointed under section 51, levying or attempting to levy any such distress, shall, on conviction before a Presidency Magistrate, be liable to be punished with fine which may extend to five hundred rupees and with imprisonment for a term which may extend to three months in addition to any other liability he may have incurred by his proceedings.

CHAPTER IX.

REFERENCES TO HIGH COURT.

Reference
when
compul-
sory.

²69. (1) If two or more Judges of the Small Cause Court sit together in any suit, or in any proceeding under Chapter VII of this Act, and differ in their opinion as to any question of law or usage having the force of law or the construction of a document, which construction may affect the merits, or

¹The second paragraph, relating to the application of sums raised as costs towards payment of contingent charges and remuneration of bailiffs, was omitted by para. 3 and the First Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937.

²Substituted for the original section by sec. 4 of the Presidency Small Cause Courts Act, 1906 (IV of 1906).

of 1882.]

(Chapter IX.—References to High Court.—Chapter X.—Fees and Costs.—secs. 70, 71.)

if in any suit or in any such proceeding, in which the amount or value of the subject-matter exceeds five hundred rupees, any such question arises upon which the Court entertains reasonable doubt, and either party so requires,

the Small Cause Court shall draw up a statement of the facts of the case and the point on which there is a difference of opinion or on which doubt is entertained, and refer such statement with its own opinion on the point for the opinion of the High Court; and the provisions of sections 619 to 621 of the Code of Civil Procedure, shall, so far as they are applicable, be deemed to apply as if such reference had been made under section 617² of the said Code.

XIV of
1882.

(2) When the Small Cause Court refers any question for the opinion of the High Court as provided in sub-section (1), it shall either reserve judgement or give judgment contingent upon such opinion.

70. When judgment is given under section 69 contingent upon the opinion of the High Court, the party against whom such judgment is given shall at once furnish security, to be approved by the Small Cause Court, for the costs of the reference to the High Court and for the amount of such judgment:

Security to be furnished on such reference by party against whom contingent judgment given.

Provided that no security for the amount of such judgment shall be required in any case in which the Judge who tried the case has ordered such amount to be paid into Court, and the same has been paid accordingly.

Unless such security as aforesaid is at once furnished, the party against whom such contingent judgment has been given shall be deemed to have submitted to the same.

If no such security given, party to be deemed to have submitted to judgment.

CHAPTER X:

FEEs AND COSTS.

71. A fee not exceeding—

Institution-fee.

²See now the Code of Civil Procedure, 1908 (Act V of 1908), Sch. I, Order XLVI, rules 3-5.

³See now rule 1, *ibid.*

(Chapter X.—Fees and Costs.—secs. 72, 72A.)

- (a) when the amount or value of the subject-matter does not exceed ¹[fifty rupees] the sum of two annas in the rupee or such amount or value,
- ²(b) when the amount or value of the subject-matter exceeds fifty rupees, but does not exceed five hundred rupees—the sum of six rupees four annas and three annas in the rupee on the excess of such amount or value over fifty rupees,
- ³(c) when the amount or value of the subject-matter exceeds five hundred rupees—the sum of ³[ninety rupees ten annas], and one anna ³[six pies] in the rupee on the excess of such amount or value over five hundred rupees,

shall be paid on the plaint in every suit, and every application under ⁴*** section 41; and no such plaint or application shall be received until such fee has been paid.

An additional fee of ten rupees shall be paid on the filing of every agreement under section 20.

**Fees for
processes.**

72. The fees specified in the third and fourth columns of the fourth schedule hereto annexed shall be paid previous to the issue in any suit or in any proceeding under Chapter VII of this Act of the processes, to which the said columns respectively relate, by the persons on whose behalf such processes are issued, when the amount or value of the subject-matter exceeds the sum specified in the first column, but does not exceed the sum specified in the second column of the said schedule.

**Convey-
ance
charges
for service
of certain
processes.**

⁵**72A.** Conveyance charges to bailiffs on such scale as may, from time to time, be fixed by the Chief Judge with the previous approval of the ⁶[State Government] shall be paid previous to the issue in any suit or proceeding under this Act of processes by the persons on whose behalf such processes are issued.

¹These words were substituted for the words "five hundred rupees" by sec. 16(1) of the Bengal Court-fees (Amendment) Act, 1922 (Ben. Act IV of 1922).

²This clause was inserted by sec. 16(2), *ibid.*

³Clause (b) was renumbered as clause (c), for the words "sixty-two rupees eight annas" the words "ninety rupees ten annas" were substituted, and after the words "one anna" the words "six pies" were inserted by sec. 16(3), *ibid.*

⁴The words and figures "section 38 or" were repealed by the Presidency Small Cause Courts (1882) Amendment Act, 1896 (VII of 1896).

⁵Section 72A was inserted by sec. 3 of the Presidency Small Cause Courts (Bengal Amendment) Act, 1932 (Ben. Act XX of 1932).

⁶The words "Provincial Government" were first substituted for the words "Local Government" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

of 1882.]

(Chapter X.—Fees and Costs.—secs. 72B—73.)

¹72B. A fee of two annas when the amount or value of the subject-matter of the suit or the amount of the decree does not exceed fifty rupees, and a fee of twelve annas in any other case, shall be paid on every application mentioned in the fifth schedule hereto annexed in all suits or other proceedings under this Act.

Fees for certain applications.

Every such application shall be in writing and no such applications shall be received until such fee has been paid:

Provided that an application referred to in item 15 of the said schedule may be received without payment of such fee but notice shall not be issued until the fee has been paid.

Explanation.—For the purposes of this section ‘suit’ includes a proceeding under Chapter VII.

¹72C. A fee amounting to one-half of the fee payable on the plaint in a suit for the amount or value of the relief claimed in the application, including the value of any relief claimed in respect of costs, shall be paid on every application made under section 38 on which the Court orders that notice be issued on the opposite party, and such notice shall not be issued until such fee has been paid:

Fees for applications under section 38.

Provided that where a new trial is ordered to be held in respect of the whole of the subject-matter of the suit the Court may direct that such fee be repaid, in whole or in part, to the party by whom it has been paid.

²73. Whenever any suit, or any proceeding under Chapter VII, is settled by agreement of the parties before the hearing half the amount of all fees paid up to that time shall be repaid by the Small Cause Court to the parties by whom the same have been respectively paid, provided that—

Repayment of half fees on settlement before hearing.

(a) the fact of such settlement is communicated, by a petition signed by the parties or their agents, to the Court before or within twenty-one days after the expiry of the period fixed by the Court or the Registrar for entering appearance, or, in the case of a proceeding under Chapter VII, before or within twenty-one days after the day appointed for showing cause, and

¹New sections 72B and 72C were inserted by sec. 3 of the Presidency Small Cause Courts (Amendment) Act, 1934 (Ben. Act VIII of 1934).

²This new section was substituted by sec. 4, *ibid.*, for the following existing section, namely:—

“Repayment of half fees, on settlement before hearing.—Whenever any such suit or proceeding is settled by agreement of the parties before the hearing, half the amount of all fees paid up to that time shall be repaid by the Small Cause Court to the parties by whom the same have been respectively paid.”

(Chapter X.—Fees and Costs.—Chapter XI.—Misconduct of Inferior Ministerial Officers.—secs. 74—79.)

- (b) application for the repayment is made within twelve months after the date of such petition or within such further period, if any, as the Chief Judge, for reasons to be recorded in writing, may allow.

Fees and costs of poor persons.

74. The Small Cause Court may, whenever it thinks fit, receive and register suits instituted, and applications under section 41 made, by poor persons, and may issue processes on behalf of such persons, without payment or on a part-payment of the fees mentioned in sections 71 and 72.

Power to vary fees.

75. The "[State Government] may, from time to time, by notification in the Official Gazette, vary the amount of the fees payable under sections 71 and 72:

Provided that the amount of such fees shall in no case exceed the amount prescribed by the said sections.

Expense of employing legal practitioners.

76. The expense of employing an advocate, vakil, attorney or other legal practitioner incurred by any party shall not be allowed as costs in suit or in any proceeding under Chapter VII of this Act, in the Small Cause Court, in which suit or proceeding the amount or value of the subject-matter does not exceed twenty rupees, unless the Court is of opinion that the employment of such practitioner was under the circumstances reasonable.

Sections 3, 5 and 25 of Court-fees Act, 1870, saved.

77. Nothing contained in this Chapter shall affect the provisions of sections 3, 5 and 25 of the Court-Fees Act, 1870. VII of 1870.

CHAPTER XI.

MISCONDUCT OF INFERIOR MINISTERIAL OFFICERS.

¹78. [Power to fine officers.—Rep. by para. 3 and the First Schedule of the Government of India (Adaptation of Indian Laws) Order, 1937.]

Default of bailiff or other officer in execution of order or warrant.

79. If any clerk, bailiff or other inferior ministerial officer of the Small Cause Court who is employed as such in the execution of any order or warrant, loses, by neglect, connivance or omission, an opportunity of executing such order or warrant, he shall be liable, by order of the Chief Judge, on the application of the person injured by such neglect, connivance or omission, to pay such sum not exceeding in any case the sum for which the said order or warrant was issued, as, in the opinion of the Chief Judge, represents the amount of the damage sustained by such person thereby.

¹See foot-note 6 on page 522, ante.

²This power is now regulated by rules made or deemed to have been made under article 309 of the Constitution of India.

of 1882.]

(Chapter XI.—*Misconduct of Inferior Ministerial Officers.*—
Chapter XII.—*Contempt of Court.*—secs. 80—87.)

80. If any clerk, bailiff or other inferior ministerial officer of the Small Cause Court is charged with extortion or misconduct while acting under colour of its process, or with not duly paying or accounting for any money levied by him under its authority, the Court may inquire into such charge, and may make such order for the repayment or payment of any money so extorted, or of any money so levied as aforesaid, and of damages and costs, by such officer, as it thinks fit.

Extortion
or default
of officers.

81. For the purposes of any inquiry under this Chapter, the Small Cause Court shall have all the powers of summoning and enforcing the attendance of witnesses and compelling the production of documents which it possesses in suits under this Act.

Court em-
powered
to sum-
mon wit-
nesses,
etc.

82. Any order under this Chapter for the payment or repayment of money may, in default of payment of the amount payable thereunder, be enforced by the person to whom such amount is payable as if the same were a decree of the Small Cause Court in his favour.

Enforce-
ment of
order.

CHAPTER XII.

CONTEMPT OF COURT.

83. [*Procedure of Court in certain cases of contempt.*—*Repealed by the Repealing and Amending Act, 1914 (10 of 1914), sec. 3 and Schedule II].*

84. [*Record in such cases.*—*Repealed by the Repealing and Amending Act, 1914 (10 of 1914), sec. 3 and Schedule II].*

85. [*Procedure where Court considers that case should not be dealt with under section 83.*—*Repealed by the Repealing and Amending Act, 1914 (10 of 1914), sec. 3 and Schedule II].*

86. [*Discharge of offender on submission or apology.*—*Repealed by the Repealing and Amending Act, 1914 (10 of 1914), sec. 3 and Schedule II].*

87. If any witness before the Small Cause Court refuses to answer such 'questions as are put to him, or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, the Court may sentence him to simple imprisonment, or commit him to the custody of an officer of the Court, for any term not exceeding seven days, unless in the meantime such person consents to answer such

Imprison-
ment or
committal
of person
refusing
to answer
or produce
document.

[Act XV

(Chapter XII.—Contempt of Court.—Chapter XIII.—
Miscellaneous.—secs. 88—92.)

questions or to produce such document, as the case may be, after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of section ¹[480 or section 482 of the Code of Criminal Procedure, 1898].

Appeal
from
orders
under
section 87.

88. Any person deeming himself aggrieved by an order under² * * * section 87 may appeal to the High Court, and the provisions of the ³[Code of Criminal Procedure, 1898] relating to appeals shall, so far as may be, apply to appeals under this section.

CHAPTER XIII.

MISCELLANEOUS.

Persons
by whom
process
may be
served.

89. Notices to produce documents, summonses to witnesses, and all other processes issued in the exercise of any jurisdiction conferred on the Small Cause Court by this Act, except summonses to defendants and writs of execution, may, if the Court by general or special order so directs, be served by such persons as the Court, from time to time, appoints in this behalf.

Registers
and
returns.

90. The Small Cause Court shall keep such registers, books and accounts, and submit to the High Court such statements and returns, as may, subject to the approval of the ⁴[State Government], be prescribed by the High Court.

Court to
furnish
records,
etc., called
for by
State
Govern-
ment or
High
Court.

91. The Small Cause Court shall comply with such requisitions as may, from time to time, be made by the ⁴[State Government] or High Court for records, returns and statements in such form and manner as such Government or Court, as the case may be, thinks fit,

Holidays
and
vacations.

92. The Small Cause Court shall, at the commencement of each year, draw up a list of holidays and vacations to be observed in the Court, and shall submit the same for the approval of the ⁴[State Government].

Such list, when it has received such approval, shall be published in the ⁵[Official Gazette], and the said holidays and vacations shall be observed accordingly.

¹Substituted for the words "83 or section 85" by sec. 2 and Sch. I of the Repealing and Amending Act, 1914 (X of 1914).

²The words and figures "section 83 or" were repealed by sec. 3 and Sch. II, *ibid*.

³Substituted for the words and figures "Presidency Magistrates' Act, 1877" by sec. 2 and Sch. I, *ibid*.

⁴See foot-note 6 on page 522, *ante*.

⁵Substituted for the words "local official Gazette" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1882.]

(Chapter XIII.—Miscellaneous.—secs. 93—97 and the First and Second Schedules.)

93. The ¹[President] ²* * *, the Governors of ³[Madras], ⁴[Bombay and West Bengal], ⁵* * * and the Chief Justices and Judges of the High Courts ⁶* * *, shall not be liable to arrest by order of the Small Cause Court.

Certain persons exempt from arrest by Court.

94. No suit shall lie on any decree of the Small Cause Court.

No suit to lie upon decree of Court.

95. Any person ordered by the Small Cause Court to be imprisoned may be imprisoned in such place as the ⁷[State Government], from time to time, appoints in this behalf.

Plac of imprisonment.

96. If any person against whom any suit is brought for anything purporting to be done by him under this Act has, before the institution of the suit, tendered sufficient amends to the plaintiff, the plaintiff shall not recover.

Tender in suit for anything done under Act.

97. All prosecutions for anything purporting to done under this Act must be commenced within three months after the offence was committed.

Limitation of prosecutions.

The First Schedule.—[Enactments repealed.]—

Rep. by the Repealing Act, 1938 (1 of 1938), sec. 2 and Sch. and the West Bengal Repealing and Amending Act, 1948 (West Ben. Act VII of 1948), sec. 3 and the Second Sch.

THE SECOND SCHEDULE.

Portions of Civil Procedure Code extending to Court.—

Rep. by the Presidency Small Cause Courts Act, 1895 (1 of 1895), s. 12.

¹Substituted for the words "Governor General" by para. 4(I) of the Adaptation of Laws Order, 1950.

²The words "and members of his Council" were omitted by para. 3 and the First Schedule of the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948.

³Substituted, *ibid.*, for the words "Fort St. George."

⁴The words "Bombay and Fort William in Bengal" were first substituted for the words "and Bombay" by sec. 7 and Sch. E of the Bengal, Bihar and Orissa and Assam Laws Act, 1912 (VII of 1912) and thereafter the words "West Bengal" were substituted for the words "Fort William in Bengal" by para. 3 and the First Schedule to the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948.

⁵The words "and the Members of their respective Councils" were omitted by para. 3 and the First Schedule to the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948, and the words "the Lieutenant-Governor of Bengal" were omitted by sec. 7 and Sch. E of the Bengal, Bihar and Orissa and Assam Laws Act, 1912 (VII of 1912).

⁶The words "for Part A States" were first substituted for the words "established under the twenty-fourth and twenty-fifth of Victoria, Chapter 104," by para. 3 and the First Schedule of the Adaptation of Laws Order, 1950, and thereafter the words "for Part A States" were omitted by para. 3 and the Schedule of the Adaptation of Laws (No. 2) Order, 1956.

⁷See foot-note 6 on page 522, *ante*.

(The Third Schedule.)

THE THIRD SCHEDULE

FORMS

A

(See section 53.)

In the Small Cause Court for

A. B. ——— (plaintiff),

Versus

C. D. ——— (defendant).

A. B., of ———, in the town of ———, maketh oath [or affirms] and saith that C. D. ———, of ———, is justly indebted to ——— in the sum of Rs. ——— for arrears of rent of the house and premises No. ———, situated at ———, in the town of ———, due for ——— months, to wit, from ——— to ———, at the rate of Rs. ——— per mensem.

Sworn [or affirmed] before me the ——— day of ——— 188:

Uudge [or Registrar]:

B

[See section 54.]

In the Small Cause Court for

FORM OF WARRANT

I hereby direct you to distrain the moveable property of C. D., on the house and premises situate at No. ———, in the town of ———, for the sum of ——— Rs. and the costs of the distress, according the provisions of Chapter VIII of the Presidency Small Cause Courts Act, 1882.

Dated day of 18 .

(Signed and sealed.)

To E. F., Bailiff and Appraiser.

of 1885.]

(The Third Schedule.)

C

[See section 59.]

In the Small Cause Court for

FORM OF INVENTORY AND NOTICE.

(State particulars of property seized.)

Take notice that I have this day seized the movable property contained in the above inventory for the sum of——Rs., being the amount of——months' rent due to A. B, at——last, and that unless you pay the amount thereof; together with the costs of this distress, within five days from the date hereof, or obtain an order from one of the Judges or the Registrar of the Small Cause Court to the contrary, the same will be appraised and sold pursuant to the provisions of Chapter VIII of the Presidency Small Cause Courts Act, 1882. Dated the day of 18 .

(Signed) E. F.,
Bailiff and Appraiser.

To C. D.

D

(See section 64.)

In the Small Cause Court for

Take notice that we have appraised the movable property seized on the——day of——, under the provisions of Chapter VIII of the Presidency Small Cause Courts Act, 1882, of which seizure and property a notice and inventory were duly served upon you (or upon——on your behalf, as the case may be) under date the—— and that the said property will be sold on the——[two clear days' at least after the date of the notice] at——pursuant to the provisions of the said Act. Dated this——day of——18 .

(Signed) E. F.,
G. H.,

To C. D.

Bailiffs and Appraisers.

For the part marked E of the Third Schedule, *substitute* the following part, namely:—

“E

(See section 66.)

In the Small Cause Court for

SCALE OF FEES TO BE LEVIED IN DISTRAINTS FOR HOUSE-RENT

Sums used for		Affidavit and warrant to distrain	Order to sell	Commis- sion	Total	
Rs.	Rs.	Rs. p.	Rs. p.	Rs. p.	Rs. p.	P.
1 and under	5 ..	0.25	0.50	0.50	1.25	0
5 and under	10 ..	0.50	0.50	1.00	2.00	0
10 and under	15 ..	0.50	0.50	1.50	2.50	0
15 and under	20 ..	0.50	1.00	2.00	3.50	0
20 and under	25 ..	0.75	1.00	2.50	4.25	0
25 and under	30 ..	1.00	1.00	3.00	5.00	0
30 and under	35 ..	1.00	1.00	3.50	5.50	0
35 and under	40 ..	1.00	1.50	4.00	6.50	
40 and under	45 ..	1.25	2.00	4.50	7.75	it
45 and under	50 ..	1.50	2.00	5.00	8.50	h
50 and under	60 ..	2.00	2.00	6.00	10.0	h,
60 and under	80 ..	2.50	2.50	6.50	11.50	ge
80 to	100 ..	3.00	3.00	7.00	13.00	pe
Upwards of	100 ..	3.00	3.00	7 per centum.		

The above scale includes all expenses, except in suits where the tenant disputes the landlord's claim and witnesses have to be subpoenaed, in which case each subpoena for sums under Rs. 40 must be paid for at twenty-five paise each, and seventy-five paise above that amount; and also where peons are kept in charge of property distrained, such sum not exceeding fifty paise per day as may be fixed from time to time by the Chief Judge must be paid per man.”

(Substituted by West Ben. Act XXXII of 1969, section 5.)

[No. 8, dated the 1st October, 1973.]

For the Fourth Schedule, substitute the following Schedule, namely:—

“THE FOURTH SCHEDULE

[See section 72.]

FEES FOR SUMMONSES AND OTHER PROCESSES.

When the amount or value of the subject-matter exceeds	But does not exceed	Fee for summonses	Fee for other processes
Rs.	Rs.	Rs. p.	Rs. p.
0 ..	10	0.15	0.15
10 ..	20	0.25	0.25
20 ..	50	0.50	0.50
50 ..	100	1.00	1.00
100 ..	200	1.25	2.00
200 ..	300	1.50	3.00
300 ..	400	1.75	4.00
400 ..	500	2.00	5.00
500 ..	600	2.25	6.00
600 ..	700	2.50	7.00
700 ..	800	2.75	8.00
800 ..	900	3.00	9.00
900 ..	1,000	3.25	10.00
1,000 ..	1,100	3.40	10.50
1,100 ..	1,200	3.50	11.00
1,200 ..	1,300	3.65	11.50
1,300 ..	1,400	3.75	12.00
1,400 ..	1,500	3.90	12.50
1,500 ..	1,600	4.00	13.00
1,600 ..	1,700	4.15	13.50
1,700 ..	1,800	4.30	14.00
1,800 ..	1,900	4.45	14.50
1,900 ..	2,000	4.60	15.00
2,000 ..	2,200	4.75	15.50
2,200 ..	2,400	4.90	16.00
2,400 ..	2,600	5.05	16.50
2,600 ..	2,800	5.20	17.00
2,800 ..	3,000	5.35	17.50
3,000 ..	3,200	5.45	17.75
3,200 ..	3,400	5.55	18.00
3,400 ..	3,600	5.65	18.25
3,600 ..	3,800	5.75	18.50
3,800 ..	4,000	5.85	19.00
4,000 ..	4,200	5.95	19.15
4,200 ..	4,400	6.05	19.30
4,400 ..	4,600	6.20	19.45
4,600 ..	4,800	6.30	19.60
4,800 ..	5,000	6.40	19.75. "

(Substituted by West Ben. Act XXXII of 1969, section 6.)

[No. 8, dated the 1st October, 1973.]

orders that notice be issued on the opposite party.

¹This Schedule was inserted by sec. 5 of the Presidency Small Cause Courts (Bengal Amendment) Act, 1934 (Ben. Act VIII of 1934).

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SCHEDULE I.—REPEAL OF ENACTMENTS.

SCHEDULE II.—PARTICULARS OF RECEIPT AND OF STATEMENT OF ACCOUNT.

SCHEDULE III.—LIMITATION.

¹Act VIII of 1885

(The Bengal Tenancy Act, 1885².)

SUPPLEMENTED

Ben. Act III of 1895.

/ Act VIII of 1886.

Ben. Act III of 1898.

Ben. Act. I of 1903.

Ben. Act III of 1913.

Ben. Act II of 1918.

Ben. Act III of 1919.

Ben. Act X of 1923.

Ben. Act I of 1925.

Ben. Act VI of 1938.

Ben. Act I of 1939.

AMENDED

Ben. Act II of 1939.

Ben. Act XIII of 1939.

Ben. Act XVIII of 1940.

Ben. Act XII of 1945.

Ben. Act XVI of 1946.

Ben. Act V of 1947.

West Ben. Act XII of 1947.

West Ben. Act VII of 1948.

West Ben. Act II of 1953.

West Ben. Act XIX of 1955.

REPEALED IN PART AND AMENDED.

Act XXXVIII of 1920.

Ben. Act I of 1907.

Ben. Act IV of 1928.

Ben. Act II of 1930.

E.B. & A. Act I of 1908.

(a) The Government of India (Adaptation of Indian Laws) Order, 1937.

(b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

ADAPTED

(c) The Adaptation of Laws Order 1950.

(14th March, 1885).

An Act to amend and consolidate certain enactments relating to the

¹This Act shall stand repealed with the coming into force of clause (5) of section 59 of the West Bengal Land Reforms Act, 1955 (West Ben. Act X of 1956).

In terms of the provisions of sub-section (3) of section 3 read with Schedule III of the West Bengal Transferred Territories (Assimilation of Laws) Act, 1958 (West Ben. Act XIX of 1958), this Act shall not extend to, or come into force in, the territories transferred from the State of Bihar to the State of West Bengal by sec. 3 of the Bihar and West Bengal (Transfer of Territories) Act, 1956 (XL of 1956).

²LEGISLATIVE PAPERS.—For Statement of Objects and Reasons see the *Gazette of India*, 1883, Pt. V, page 129; for Report of Select Committee, see *ibid.*, 1884, Pt. V, page 25; and for Proceedings in Council, see *ibid.*, 1883, Supplement, pages 268, 831, 885, 996, 1519 and 2303; *ibid.*, 1884, Supplement, pages 633 and 1405; *ibid.*, 1885, Supplement, pages 269, 639, 743 and 776.

LOCAL EXTENT.—This Act [except section 31A] extends to the whole of the former Province of Bengal except the town of Calcutta, the Division of Orissa, and the Scheduled Districts—see sec. 1(3).

The Act has never been extended to the town of Calcutta.

The Act has, with certain exceptions, restrictions and modifications, been extended, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), secs. 5 and 5A, to the Jalpaiguri district.

Section 31A(1) applies only to districts or parts of districts to which it is extended by the State Government by notification in the *Official Gazette*.

(For the concluding portion of foot-note 1, see next page).

(Chapter I.—Preliminary.—Section 1.)

*Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal.*¹

WHEREAS it is expedient to amend and consolidate certain enactments relating to the law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal¹ ; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

- | | |
|-----------------------------|--|
| Short title. | 1. (1) This Act may be called the Bengal Tenancy Act, 1885. |
| Com-
mence-
ment. | (2) It shall come into force on such date ² (hereinafter called the commencement of this Act) as the ³ [State Government], with the previous sanction of the ⁴ [Central Government], may, by notification in the ⁵ [Official Gazette], appoint in this behalf. |
| Local
extent. | ⁶ (3) It extends by its own operation to the whole of ⁷ [West Bengal], except— |
| Ben. Act
III of
1923. | (i) Calcutta, that is to say, the area described in Schedule I to the Calcutta Municipal Act, 1923 ⁸ , but excluding the area added to Calcutta as defined in clause (r) of section 3 of that Act ; |

COMMENCEMENT.—Act VIII of 1885 was declared to come into force on the 1st November, 1885, by a notification, dated the 4th September, 1885—see the *Calcutta Gazette*, 9th *idem*, Pt. 1, page 874. That notification was, however, modified as to the commencement of secs. 61 to 64 and Chapter XII by Act XX of 1885, section I, which enacted that those portions of the Act should come into force on such date, not later than the 1st day of February, 1886, as the Provincial Government might appoint, or, if no such date was appointed, then on the 1st February, 1886. (No such date was appointed). Act XX of 1885 was repealed by the Repealing and Amending Act, 1891 (XII of 1891).

¹This includes the present State of West Bengal, and other territory.

²See foot-note above headed "Commencement."

³The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(I) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

⁴These words were substituted for the words "Governor-General in Council" by paragraph 4(I) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵These words were substituted for the words "Local Official Gazette", *ibid*.

⁶This sub-section was substituted for the original sub-section (3) by sec. 2 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁷These words were substituted for the word "Bengal" by paragraph (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

⁸The Calcutta Municipal Act, 1923, was repealed and re-enacted by the Calcutta Municipal Act, 1951 (West Ben. Act XXXIII of 1951).

(Chapter I.—Preliminary.—Section 2.)

- (ii) (a) the area added to Calcutta as defined in clause (1) of section 3 of the Calcutta Municipal Act, 1923¹, or any part thereof ; and
 (b) any area or part of any area included in Calcutta by notification under sub-section (3) of section 543 of that Act²,
 if such area or part is specified in a notification made in this behalf by the ³[State Government];
- (iii) * * * any area constituted a municipality under the provisions of the Bengal Municipal Act, 1932⁴, or part thereof, if such area or part is specified in a notification made in this behalf by the ⁵[State Government]:
⁶Provided that a notification under this clause shall be no bar to the operation of this Act in respect of agricultural lands situated within the area specified in such notification ; and
- (iv) the Scheduled Districts⁷ specified in the Part III of the First Schedule to the Scheduled Districts Act, 1874: XIV of 1874.
 Provided that no notification shall be issued under clause (ii) or clause (iii) of this sub-section, unless—
 (a) it is previously published in the area concerned or part thereof in the prescribed manner ; and
 (b) ⁸[both Chambers of the State Legislature], by a resolution ⁹[recommend] that the notification be issued.

Repeal. 2. (1) The enactments specified in Schedule I hereto annexed are repealed in the territories to which this Act extends by its own operation.

¹The Calcutta Municipal Act, 1923, was repealed and re-enacted by the Calcutta Municipal Act, 1951 (West Ben. Act XXXIII of 1951).

²See foot-note 1, above.

³See foot-note 3 on page 544, *ante*.

⁴The words "lands other than agricultural lands situated within" in sec. 1(3)(iii) were omitted by sec. 2(a) of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

⁵The figures "1932" were substituted for the figures "1884" by section 2 of, and the First Schedule to, the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

⁶This proviso was inserted by sec. 2(b) of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

⁷This Act has, with certain exceptions, restrictions and modifications, been extended to the Jalpaiguri district.

⁸The words "both Chambers of the Provincial Legislature" were originally substituted for the words "the Bengal Legislative Council" by para. 3 and Schedule I to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁹This word was substituted for the word "recommends" by paragraph 5(2) of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Chapter I.—Preliminary.—Section 3.)

¹(2) Any enactment or document referring to any enactment hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof.

¹(3) The repeal of any enactment by this Act shall not revive any right, privilege, matter or thing not in force or existing at the commencement of this Act.

²3. In this Act, unless there is something repugnant in the subject or context,—

³(1) “Agricultural year” means the Bengali year commencing on the first day of *Baisakh*⁴ :

Ben. Act
IV of 1928.

Provided that where, immediately before the commencement of the Bengal Tenancy (Amendment) Act, 1928, any other year has prevailed for agricultural purposes that year shall continue to prevail for those purposes until the first day of *Baisakh*⁴ next following the date of the commencement of that Act ;

⁵(2) “Collector” means the Collector of a district or any other officer appointed by the ⁶[State Government] to discharge any of the functions of a Collector under this Act ;

⁷(3) “complete usufructuary mortgage” means a transfer by a tenant of the right of possession in any land for the purpose of securing the payment of money or the return of grain advanced or to be advanced by way of loan upon the condition that the loan, with all interest thereon, shall be deemed to be extinguished by the profits arising from the land during the period of the mortgage ;

⁸(4) “estate” means land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the Collector of a district, and includes Government *khas mahals* and revenue-free lands not entered in any register ;

¹These sub-sections were re-numbered as sub-sections (2) and (3) by sec. 3(2) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928). Original sub-section (2) was omitted by sec. 3(1), *ibid*.

²The definitions have been rearranged in alphabetical order and renumbered consecutively by sec. 129 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³This definition was substituted for the former clause (11) by section 4(e), *ibid*.

⁴The month of *Baisakh* corresponds with the last part of April and the first part of May.

⁵This definition was numbered as clause (16) originally.

⁶See foot-note 3 on page 544, *ante*.

⁷This definition was inserted by sec. 4(h) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁸This definition was numbered as clause (1) originally.

of 1885.]

(Chapter I.—Preliminary.—Section 3.)

¹(5) ‘holding’ means a parcel or parcels of land or an undivided share thereof, held by a *raiyat* or an under-*raiyat* and forming the subject of a separate tenancy ²[whether the *raiyat* or under-*raiyat* has held the land before or after the commencement of the Bengal Tenancy (Amendment) Act, 1928] ;

Ben. Act
IV of 1928.

³(6) “landlord” means a person immediately under whom a tenant holds, and includes the Government ;

⁴(7) “pay”, “payable” and “payment” used with reference to rent, include “deliver”, “deliverable” and “delivery” ;

⁵(8) “Permanent Settlement” means the Permanent Settlement of Bengal * * * made in the year 1793 ;

⁷(9) “permanent tenure” means a tenure which is heritable and which is not held for a limited time ;

⁸(10) “prescribed” means prescribed by rules made by the ⁹[State Government] under this Act ;

¹⁰(11) “proprietor” means a person owning whether in trust or for his own benefit, an estate or a part of an estate ;

¹¹(12) “registered” means registered under any Act ¹²for the time being in force for the registration of documents ;

¹This definition was substituted for the former clause (9) by sec. 4(c) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words were added by sec. 2 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

³This definition was numbered as clause (4) originally.

⁴This definition was numbered as clause (6) originally.

⁵This definition was numbered as clause (12) originally.

⁶In clause (8), the words “Bihar and Orissa” were omitted by sec. 4(f) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁷This definition was numbered as clause (8) originally.

⁸This definition was substituted for the former clause (15) by sec. 4 (g) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁹See foot-note 3 on page 544, *ante*.

¹⁰This definition was numbered as clause (2) originally.

¹¹This definition was numbered as clause (18) originally.

¹²See now the Indian Registration Act, 1908 (XVI of 1908).

(Chapter I.—Preliminary.—Section 3.)

¹(13) "rent" means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant :

in sections 53 to 68, both inclusive, sections 72 to 75, both inclusive, * * * Chapter XIV³ and Schedule III of this Act, "rent" includes also money recoverable under any enactment for the time being in force as if it was rent ;

⁴(14) "Revenue-officer" in any provision of this Act includes any officer whom the ⁵[State Government] may appoint by name or by virtue of his office to discharge any of the functions of a Revenue-officer under that provision ;

⁶(15) "signed" includes "marked" when the person making the mark is unable to write his name , it also includes "stamped" with the name of the person referred to ;

⁷(16) "succession" includes both intestate and testamentary succession ;

⁸(17) "tenant" means a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that person :

⁹Provided that a person who, under the system generally known as "*adhi*", "*barga*" or "*bhag*", cultivates the land of another person on condition of delivering a share of the produce to that person, is not a tenant, unless—

- (i) such person has been expressly admitted to be a tenant by his landlord in any document executed by him or executed in his favour and accepted by him, or
- (ii) he has been or is held by a Civil Court to be a tenant ;

¹⁰(18) "tenure" means the interest of a tenure-holder or an under-tenure-holder ;

¹This definition was numbered as clause (5) originally.

²In clause (13) the words and figures "Chapter XII" were omitted by sec. 4(b) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³The words and figures "Chapter XIV" were inserted, for Western Bengal, by sec. 4(I) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907) and for Eastern Bengal, by sec. 4(I) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

⁴This definition was numbered as clause (17) originally.

⁵See foot-note 3 on page 544, *ante*.

⁶This definition was numbered as clause (14) originally.

⁷This definition was numbered as clause (13) originally.

⁸This definition was numbered as clause (3) originally.

⁹This proviso was inserted by sec. 4(a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

¹⁰This definition was numbered as clause (7) originally.

of 1885.]

(Chapter I.—Preliminary.—Section 3.)

¹(19) "village" means the area defined, surveyed and recorded as a distinct and separate village in—

(a) the general land revenue survey which has been made of the ²[State] of ³[West Bengal], or

(b) any survey made by the Government ⁴[which has been adopted by notification in the *Calcutta* or *Eastern Bengal and Assam Gazette* or] which may be adopted by notification in the *Calcutta Gazette*, as defining villages for the purposes of this clause in any specified area ;

and, where a survey has not been made by, or under the authority of, the Government, such area as the Collector may, with the sanction of the Board of Revenue, by general or special order, declare to constitute a village :

⁵Provided that, when an order has been made under section 101 directing that a survey be made and a record-of-rights prepared in respect of any local area, estate, tenure or part thereof, the Government may, by notification in the ⁶[*Official Gazette*], declare that in such local area, estate, tenure or part thereof "village" shall mean the area which for the purposes of such survey and record-of-rights may be adopted by the Revenue-officer with the sanction of the Board of Revenue

¹This definition was numbered as clause (10) originally. This clause as inserted by clause (2) of sec. 4 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907) and as modified by sec. 4(d) (i) and (ii) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928) was substituted for clause (10), as inserted by clause (2) of sec. 4 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908), by sec. 4(d) (iii) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²This word was substituted for the word "Province" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

³See foot-note 7 on page 544, *ante*.

⁴These words were inserted by sec. 4(d) (i) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁵This proviso which was in force in Eastern Bengal was added by sec. 4(d) (ii), *ibid.*, with certain modifications.

⁶The words "*Calcutta Gazette*" were originally substituted for the words "*Eastern Bengal and Assam Gazette*" by sec. 4(d) (ii) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), and thereafter the words "*Official Gazette*" were substituted for the words "*Calcutta Gazette*" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Chapter II.—Classes of Tenants.—Sections 4, 5.)

¹[accorded under the provisions of section 115A) as the unit of survey and record.²

CHAPTER II.

CLASSES OF TENANTS.

Classes of
tenants.

4. There shall be, for the purpose of this Act, the following classes of tenants, (namely) :—

- (1) tenure-holders, including under-tenure-holders,
- (2) *raiylats*, and
- (3) under-*raiylats*, that is to say, tenants holding whether immediately or mediately under *raiylats* ;

and the following classes of *raiylats*, namely :—

- (a) *raiylats* holding at fixed rates, which expression means *raiylats* holding either at a rent fixed in perpetuity or at a rate of rent fixed in perpetuity,
- (b) occupancy-*raiylats*, that is to say, *raiylats* having a right of occupancy in the land held by them, and
- (c) non-occupancy-*raiylats*, that is to say, *raiylats* not having such a right of occupancy.

Meaning of
"tenure-
holder"
and
"*raiylat*."

5. (1) "Tenure-holder" means primarily a person who has acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it, and includes also the successors in interest of persons who have acquired such a right.

(2) "*Raiyat*" means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family, or by ¹[servants or labourers], or

¹These words, figures and letter were inserted by sec. 4(d) (ii) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²Further definitions are given in the following sections, namely:—

sec. 5 ("tenure-holder" and "*raiylat*");
sec. 16A ("person succeeding", "transferee", "purchaser", "mortgagee" and "person becoming entitled to a permanent tenure by succession");
sec. 20 ("settled *raiylat*");
sec. 26C "transferee", "transfer", "transferor", "purchaser" and "mortgagee");
sec. 30, *Explanation* ("fluvial action");
sec. 47 ("admitted to occupation");
sec. 76 ("improvement");
sec. 101, *Explanation 1* ("settlement of land-revenue");
sec. 114, *Explanation* ("tenure");
sec. 160 ("Protected interests");
sec. 161 ("incumbrance", "registered and notified incumbrance", "arrears" and "arrear of rent");
sec. 178, *Explanation* ("horticultural land");
sec. 195 (e) (ii) "*khudkast raiyat* or resident and hereditary cultivator");

¹The words "servants or labourers" were substituted for the words "hired servants" by sec. 5 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Chapter III.—Tenure-holders.—Sections 6, 7.)

with the aid of partners, and includes also the successors in interest of persons who have acquired such a right.

Explanation.—Where a tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of cultivation, notwithstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it.

(3) A person shall not be deemed to be a *raiyat* unless he holds land either immediately under a proprietor or immediately under a tenure-holder.

(4) In determining whether a tenant is a tenure-holder or a *raiyat*, the Court shall have regard to—

(a) local custom ; and

(b) the purpose for which the right of tenancy was originally acquired.

(5) Where the area held by a tenant exceeds one hundred standard *bighas*, the tenant shall be presumed to be a tenure-holder until the contrary is shewn.

CHAPTER III.

Tenure-holders.

Enhancement of rent.

6. Where a tenure has been held from the time of the Permanent Settlement, its rent shall not be liable to enhancement except on proof—

(a) that the landlord under whom it is held is entitled to enhance the rent thereof either by local custom or by the conditions under which the tenure is held, or

(b) that the tenure-holder, by receiving reductions, of his rent, otherwise than on account of a diminution of the area of the tenure, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

7. (1) Where the rent of a tenure-holder is liable to enhancement, it may, subject to any contract between the parties, be enhanced up to the limit of the customary rate payable by persons holding similar tenures in the vicinity.

(2) Where no such customary rate exists, it may, subject as aforesaid, be enhanced up to such limit as the Court thinks fair and equitable.

(3) In determining what is fair and equitable, the Court shall not leave to the tenure-holder as profit less than 10 per centum of the balance which remains after deducting from the gross rents payable to him the expenses of collecting them, and shall have regard to—

Tenure held since Permanent Settlement liable to enhancement only in certain cases.

Limits of enhancement of rent of tenures.

(Chapter III.—Tenure-holders.—Sections 8—12.)

- (a) the circumstances under which the tenure was created, for instance, whether the land comprised in the tenure, or a great portion of it, was first brought under cultivation by the agency or at the expense of the tenure-holder or his predecessors in interest, whether any fine or premium was paid on the creation of the tenure, and whether the tenure was originally created at a specially low rent for the purpose of reclamation ; and
- (b) the improvements, if any, made by the tenure-holder or his predecessors in interest.

(4) If the tenure-holder himself occupies any portion of the land included in the area of his tenure, or has made a grant of any portion of the land either rent-free or at a beneficial rent, a fair and equitable rent shall be calculated for that portion and included in the gross rents aforesaid.

Power to order progressive enhancement.

Rent once enhanced may not be altered for fifteen years.

¹8. If it thinks that an immediate increase of rent would produce hardship, the Court may direct that the enhancement shall take effect gradually at such times and by such instalments extending over a period not exceeding ten years as the Court may fix in this behalf.

9. When the rent of a tenure-holder has been enhanced by the Court or by contract, it shall not be again enhanced by the Court during the fifteen years next following the date on which it has been so enhanced ²[and for the purposes of this section, if an order for gradual enhancement of such rent has been made by a Court in accordance with the provisions of section 8, the full rent fixed by such order shall be deemed to have come into effect from the date of such order.]

Other incidents of tenures.

Permanent tenure-holder not liable to ejectment.

10. A holder of a permanent tenure shall not be ejected by his landlord except on the ground that he has broken a condition on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected :

Provided that where the contract is made after the commencement of this Act, the condition is consistent with the provisions of this Act.

Transfer and transmission of permanent tenure.

Voluntary transfer of permanent tenure.

11. Every permanent tenure shall, subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner and to the same extent as other immovable property.

³12. (1) A transfer of a permanent tenure by sale, gift or mortgage (other than a transfer by sale in execution of a decree or by summary sale under any law relating to *patni* or other tenures) can be made only by a registered instrument.

¹This section 8 was substituted for the original section by sec. 6 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words and figure were inserted by sec. 7, *ibid.*

³As to the validation of certain transfers made under secs. 12, 13, 17 or 18, see the Bengal Tenancy (Validation and Amendment) Act, 1903 (Ben. Act I of 1903), sec. 1, and as to payment of fees under those sections, see *ibid.*, sec. 2.

of 1885.]

(Chapter III.—Tenure-holders.—Section 13.)

(2) A registering officer ¹[shall not accept for registration] any instrument purporting or operating to transfer by sale, gift or ²[usufructuary] mortgage a permanent tenure ³[in favour of any person other than the sole landlord of such tenure] unless there is paid to him, in addition to any fees payable under the Act for the time being in force for the registration of documents, a process-fee of the prescribed amount ⁴[and there is filed in the prescribed manner with the instrument a notice of transfer in the prescribed form for service thereof on the landlord or his common agent, if any.]

⁵(3) When any such instrument is admitted to registration, the registering officer shall cause the notice of transfer referred to in sub-section (2) to be served on the landlord named in the notice or his common agent, if any, in the prescribed manner.

* * * * *

⁷13 (1) When a permanent tenure is sold in execution of a decree other than a decree for arrears of rent due in respect thereof, ⁸[or when a mortgage of a permanent tenure, other than an usufructuary mortgage thereof, is foreclosed,] the Court shall, before confirming the sale under ⁹[rule 92 of Order XXI in Schedule I to the Code of Civil Procedure, 1908] ¹⁰[or making a decree or order absolute for the foreclosure,] require the purchaser ¹¹[or mortgagee] to pay into Court ¹²[such

Transfer of permanent tenure by sale in execution of decree other than decree for rent.

Act V of 1908.

¹These words were substituted for the words "shall not register" by sec. 3(a) of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

²This word was inserted by sec. 1 of the Bengal Tenancy (Amendment) Act, 1886 (VIII of 1886).

³These words were inserted by sec. 8(1)(a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁴The words "together with the costs necessary for the transmission of the landlords' fee to the landlord" were added to sub-section (2) of section 12 by sec. 5(1) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and thereafter these words within square brackets were substituted for the portion beginning with "and a fee (hereinafter called the landlord's fee)" and ending with the words "the landlord's fee to the landlord" by sec. 2(1) of the Bengal Tenancy (Amendment) Act, 1947 (Ben. Act V of 1947).

⁵This sub-section was substituted for the former sub-section by sec. 2(2), *ibid*.

⁶Sub-section (4) which was added by sec. 8(2) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928) was omitted by sec. 2(3), *ibid*.

⁷See foot-note 3 on page 552, *ante*.

⁸The words "or when a mortgage of a permanent tenure, other than a usufructuary mortgage thereof, is foreclosed" within square brackets in sec 13(1) were inserted by sec. 2(1) of the Bengal Tenancy (Amendment) Act, 1886 (VIII of 1886).

⁹These words and figures were substituted for the words and figures "section 312 of the Code of Civil Procedure" by sec. 128 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

¹⁰These words were inserted by sec. 2(2) of the Bengal Tenancy (Amendment) Act, 1886 (VIII of 1886).

¹¹These words were inserted by sec. 2(3), *ibid*.

¹²These words were substituted for the portion beginning with "the landlord's fee" and ending with the words "as may be prescribed" by sec. 3(1) of the Bengal Tenancy (Amendment) Act, 1947 (Ben. Act V of 1947).

(Chapter III.—Tenure-holders.—Sections 14—16A.)

process fee as may be prescribed and also to file in the prescribed manner in the Court a notice of the sale or final foreclosure in the prescribed form for service thereof on the landlord or his common agent, if any ;]

¹(2) When the sale has been confirmed or the decree or order absolute for foreclosure has been made, the Court shall cause the notice referred to in sub-section (1) to be served on the landlord named in the notice or his common agent, if any, in the prescribed manner.

14. (*Transfer of permanent tenure by sale in execution of decree for rent.*)—*Rep. in Western Bengal by s. 2 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and in Eastern Bengal by s. 2 of the Eastern Bengal and Assam Tenancy Amendment Act, 1908 (E. B. & A. Act I of 1908).*

Succession
to perma-
nent
tenure.

²15. When a succession to a permanent tenure takes place, the person succeeding shall give notice of the succession ³[to the landlord or his common agent, if any, in the prescribed form within six months from the date of succession, in addition to or substitution of any other mode of service, in the manner referred to in sub-section (3) of section 12] :

⁴Provided that where, at the instance of the person succeeding, mutation is made in the rent-roll of the landlord within six months of the succession, the person succeeding shall not be required to give notice under this section.

Bar to
recovery
of rent,
pending
notice of
succession.

16. A person becoming entitled to a permanent tenure by succession shall not be entitled to recover by suit ⁵* * or other proceeding any rent payable to him as the holder of the tenure, ⁶[until the duties imposed upon him by section 15 have been performed].

Inter-
pretation.

⁷16A. In sections 13, 15 and 16 the words "persons succeeding", "transferee", "purchaser", "mortgagee" and "person becoming entitled to a permanent tenure by succession" include the successors in interest of such persons, but do not include the landlord where he is the sole landlord.

¹This sub-section was substituted for the original sub-section by sec. 3(2) of the Bengal Tenancy (Amendment) Act, 1947 (Ben. Act V of 1947).

²As to payment of fees under sec. 15 to the Registrar of Mutations under the Land Records Maintenance Act, 1895 (Ben. Act III of 1895), see sec. 20 of that Act.

³The words, figures and brackets within square brackets were substituted for the portion beginning with the words "to the Collector in the prescribed form" and ending with the words "in the prescribed manner" by sec. 4 of the Bengal Tenancy (Amendment) Act, 1947 (Ben. Act V of 1947).

⁴This proviso was inserted by sec. 11(2) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁵The word "distrain" was omitted by sec. 12, *ibid.*

⁶These words and figures within square brackets in sec. 16 were substituted for the words "until the Collector has received the notice, fees and costs referred to in the last foregoing section" by sec. 12, *ibid.*

⁷Section 16A was inserted by sec. 13, *ibid.*

of 1885.]

(Chapter III.—Tenure-holders.—Chapter IV.—Raiyats holding at fixed rates.—Sections 17, 18.)

¹17. Subject to the provisions of section 88 ²[sections 12, 13, 15, 16 and 16A] shall apply to the transfer of, or succession to, a share in a permanent tenure.

Transfer of, and succession to, share in permanent tenure.

CHAPTER IV.

Raiyats holding at fixed rates.

¹18. ⁴(1) A raiyat holding at a rent, or rate of rent, fixed in perpetuity—

Incidents of holding at fixed rates.

(a) shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as the holder of a permanent tenure ; ⁵*

⁶[(b) shall not be ejected by his landlord except on the ground that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected ;

(c) shall be deemed to be a settled raiyat of the village if he complies with the conditions set forth in section 20 ; and

(d) shall be entitled—

(i) to plant,

(ii) to enjoy the flowers, fruits and other products of,

(iii) to fell, and

(iv) to utilise or dispose of the timber of,

any tree on the land comprised in his holding.]

¹As to the validation of transfers made under sec. 17 or sec. 18, see foot-note 3 on page 552. *ante*.

As to the forfeiture of fees deposited under secs. 12, 13, 15, 17 and 18(1)(a), see sec. 18C, *post*, and sec. 189(4), *post*.

²The words, figures and letter "sections 12 to 16A" were originally substituted for the words "the foregoing sections" by sec. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928) and thereafter the words, figures and letter "sections 12, 13, 15, 16 and 16A" within square brackets were substituted for the words, letter and figures "sections 12 to 16A" by sec. 5 of the Bengal Tenancy (Amendment) Act, 1947 (Ben. Act V of 1947).

³As to payment of fees under Chapter IV to the Registrar of Mutations under the Land Records Maintenance Act, 1895 (Ben. Act III of 1895), see sec. 20 of that Act.

⁴Original sec. 18 was re-numbered as sub-section (1) by sec. 14(1) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁵The word "and" was repealed by sec. 14(2)(i), *ibid*.

⁶Clauses (b), (c) and (d) were substituted for the original clause (b) by sec. 14(2)(ii), *ibid*.

[Act VIII]

(Chapter IVA.—Provisions as to transfers of tenures and holdings and landlord's fees.—Sections 18A—18C.)

¹(2) The provisions of sections 23A to 38 (both inclusive) shall not apply to *rai-yats* holding at fixed rates, even though such *rai-yats* have a right of occupancy in the lands of their holdings.

²CHAPTER IVA.

Provisions as to transfers of tenures and holdings and landlord's fees.

³18A. Notwithstanding anything contained in section 13 of the Indian Evidence Act, ⁴[1872] nothing contained in any instrument of transfer to which the landlord is not a party shall be evidence against the landlord of the permanence, the amount or fixity of rent, the area, the transferability or any incident of any tenure or holding referred to in such instrument. 1 of 1872.

⁵18B. The acceptance by a landlord of ⁶[the landlord's fee] payable under Chapter III or Chapter IV in respect of any tenure or holding shall not operate—

- ⁷(a) as an admission of the permanence, the amount or fixity of rent, the area, the transferability or any incident of such tenure or holding, or
- (b) as an express consent under section 88 to the division of such tenure or holding, or to the distribution of the rent payable in respect thereof.

⁸18C. All landlord's fees and landlord's transfer fees deposited with the Collector before or after the commencement of the Bengal Tenancy (Amendment) Act, 1928, under Chapter III, IV or V, and all fees deposited with the Collector under Ben. Act IV of 1928.

¹This sub-section was inserted by sec. 14(3) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²This Chapter IVA was inserted for Western Bengal, by sec. 8 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and for Eastern Bengal, by sec. 8 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

³This section which was inserted by sec. 8 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908), was substituted for sec. 18A as inserted by sec. 8 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), by sec. 15 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁴These figures were inserted by sec. 2 of, and the First Schedule to, the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

⁵Section 18B was inserted, for Western Bengal, by sec. 8 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and for Eastern Bengal, by sec. 8 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

⁶The words "the landlord's fee" were substituted for the words "any landlord's fee" by sec. 16 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁷This clause which originally formed part of sec. 18B as in force in Eastern Bengal was substituted for clause (a) as in force in Western Bengal by sec. 17, *ibid*.

⁸This section was substituted for sec. 18C as inserted by the Bengal Tenancy (Amendment) Act, 1907, and by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, by sec. 18, *ibid*.

Saving as to state-ments in instru-ments of transfer where landlord is no party.

Saving as to accept-ance of landlord's fees.

Forefeiture of un-claimed landlord's fees.

of 1885.]

(Chapter V.—Occupancy-raiyats.—Sections 19, 20.)

sub-section (1) of section 48H, shall unless accepted or claimed by the landlord within five years from the date of service of notice, be forfeited to the Government ¹* * *

²CHAPTER V.

Occupancy-raiyats.

General.

n. Act
of 1928.

³19. (1) Every raiyat who, immediately before the commencement of the Bengal Tenancy (Amendment) Act, 1928, has, by the operation of any enactment by custom or otherwise, a right of occupancy in any land, shall, when that Act comes into force, have a right of occupancy in that land.

Continuance of existing occupancy-rights.

(2) The exclusion from the operation of this Act, by a notification under clause (ii), or clause (iii) of sub-section (3) of section 1, of any area or part of any area referred to in those clauses shall not affect any right, obligation, or liability, previously acquired, incurred or accrued, in reference to such area or part thereof.

20. (1) Every person who for a period of twelve years, whether wholly or partly before or after the commencement of this Act, has continuously held as a raiyat land situate in any village, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village.

Definition of "settled raiyat."

⁴(1A) A person shall be deemed, for the purposes of this section, to have continuously held land in a village, notwithstanding that such village was defined, surveyed and recorded as, or declared to constitute a village at a date subsequent to the commencement of the said period of twelve years.

(2) A person shall be deemed for the purposes of this section to have continuously held land in a village notwithstanding that the particular land held by him has been different at different times.

(3) A person shall be deemed, for the purposes of this section, to have held as a raiyat any land held as a raiyat by a person whose heir he is.

¹The words "to be credited to the District Boards within the respective jurisdictions of which such fees accumulate", were omitted by paragraph 3 of, and Schedule I to, the Government of India (Adaptation of Indian Laws) Order, 1937.

²Chapter V does not confer a right of occupancy in certain lands—see sec. 116, *post*.

³This section was substituted for sec. 19 as modified by the Bengal Tenancy (Amendment) Act, 1907 and the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, by sec. 19 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁴This sub-section (1A) was inserted by sec. 2 of the Bengal Tenancy (Amendment) Act, 1925 (Ben. Act I of 1925).

[Act VIII

(Chapter V.—Occupancy-raiyats.—Sections 21, 22.)

(4) Land held by two or more co-sharers as a *raiya* holding shall be deemed, for the purposes of this section, to have been held as a *raiya* by each such co-sharer.

(5) A person shall continue to be a settled *raiya* of a village as long as he holds any land as a *raiya* in that village and for one year thereafter.

(6) If a *raiya* recovers possession of land under section 87, he shall be deemed to have continued to be a settled *raiya* notwithstanding his having been out of possession more than a year.

(7) If, in any proceeding under this Act, it is proved or admitted that a person holds any land as a *raiya*, it shall, as between him and the landlord under whom he holds the land, be presumed for the purposes of this section, until the contrary is proved or admitted, that he has for twelve years continuously held that land or some part of it as a *raiya*.

Settled
raiya
to have
occupancy-
rights.

21. (1) Every person who is a settled *raiya* of a village within the meaning of ¹[section 20] shall have a right of occupancy in all land for the time being held by him as a *raiya* in that village.

(2) Every person who, being a settled *raiya* of a village within the meaning of ¹[section 20], held land as a *raiya* in that village at any time between the second day of March, 1883, and the commencement of this Act, shall be deemed to have acquired a right of occupancy in that land under the law then in force; but nothing in this sub-section shall affect any decree or order passed by a Court before the commencement of this Act.

Effect of
acquisition
of
occupancy
right by
landlord.

²22. (1) When the immediate landlord of an occupancy holding is a proprietor or permanent tenure-holder and the entire interests of the landlord and the *raiya* in the holding become united in the same person by transfer, succession or in any other way whatsoever, such person shall have no right to hold the land as a *raiya*, but shall hold it as a proprietor or a permanent tenure-holder, as the case may be, but nothing in this sub-section shall prejudicially affect the rights of any third person.

(2) Nothing in this section shall prevent the acquisition by transfer, succession or in any other way whatsoever, of the holding of an occupancy-*raiya* or share or portion thereof, together with the occupancy-rights therein by a person who is, or becomes, jointly interested in the lands as a proprietor or a permanent tenure-holder:

Provided that a co-sharer landlord who purchases a holding of a *raiya* at a sale in execution of a rent decree or of a certi-

¹The word and figures "section 20" were substituted for the words "the last foregoing section" by sec. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²This sec. 22 was substituted for the original sec. 22 by sec. 20, *ibid*.

of 1885.]

(Chapter V.—Occupancy-raiyats.—Sections 23—25.)

ficate under this Act shall not hold the land comprised in such holding as a *raiyat* but shall hold the land as a proprietor or tenure-holder, as the case may be, and shall pay to his co-sharers a fair and equitable sum for the use and occupation of the same. The rent payable by the *raiyat* to the other co-sharer landlords at the time of the transfer shall be regarded as the fair and equitable sum until otherwise determined in accordance with the principles of this Act regulating the enhancement or reduction of the rents of occupancy-raiyats.

(3) A person holding land as a temporary tenure-holder or farmer of rents shall not, while so holding, acquire a right to hold as a *raiyat* any land comprised in his temporary tenure or farm.

Explanation.—A person having a right to hold the lands of an occupancy holding as a *raiyat* does not lose it by subsequently holding the land as a temporary tenure-holder or farmer of rents.

Incidents of occupancy-right.

23. When a *raiyat* has a right of occupancy in respect of any land, he may use the land in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy ; * * *

Rights of *raiyat* in respect of use of land.

²**23A.** Subject to the provisions of section 23, when a *raiyat* has a right of occupancy in respect of any land, he shall be entitled—

Rights of occupancy-*raiyat* and landlord in trees.

- (i) to plant,
 - (ii) to enjoy the flowers, fruits and other products of,
 - (iii) to fell, and
 - (iv) to utilise or dispose of the timber of,
- any tree on such land.

24. An occupancy-*raiyat* shall pay rent for his holding at fair and equitable rates.

Obligation of *raiyat* to pay rent.

25. An occupancy-*raiyat* shall not be ejected by his landlord from his holding, except in execution of a decree for ejectment passed on the ground—

Protection from eviction except on specified grounds.

- (a) that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy, or
- (b) that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

¹The words "but shall not be entitled to cut down trees in contravention of any local custom" were omitted by sec. 21 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

Section 23A was inserted by sec. 22, *ibid.*

(Chapter V.—Occupancy-raiyats.—Sections 26—26C.)

Devolution of occupancy-right on death.

26. If a raiyat dies intestate in respect of a right of occupancy, it shall, subject to any custom to the contrary, descend in the same manner as other immovable property : provided that, in any case in which under the law of inheritance to which the raiyat is subject his other property goes to the Government, his right of occupancy shall be extinguished.

26A. (Application of sections 26B to 26J.)—[Rep. by s. 3 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).]

Holdings of occupancy-raiyats with occupancy-rights transferable.

²26B. The holding of an occupancy-raiyat or a share or a portion thereof, together with the right of occupancy therein, shall, subject to the provisions of this Act, be capable of being transferred in the same manner and to the same extent as other immovable property.

Manner of transfer and notices to landlord and co-sharers.

³26C. (1) Every transfer shall be made by registered instrument, except in the cases of a bequest or a sale in execution of a decree or of a certificate signed under the Bengal Public Demands Recovery Act, 1913 ; and a registering officer shall not accept for registration any such instrument unless the sale price, or where there is no sale price, the value of the holding or portion or share thereof transferred is stated therein, and unless it is accompanied ⁴[in the prescribed manner] by—

Ben. Act III of 1913.

- (i) a notice giving particulars of the transfer in the prescribed form, together with the process fee prescribed for the service thereof on the landlord or landlords or their common agent, if any, who is or are not party or parties to the transfer, and
- (ii) such notices and process fees as may be required by sub-section (4).

(2) In the case of a bequest of such a holding or portion or share thereof, no Court shall grant probate or letters of administration until the applicant files ⁴[in the prescribed manner] a notice and deposits a process fee similar to those referred to in clause (i) of sub-section (1).

(3) A Court or Revenue-officer shall not confirm the sale of such a holding or portion or share thereof put to sale in execution of a decree or a certificate signed under the Bengal Public

¹The word "Government" was substituted for the word "Crown" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

²Section 26B was inserted by sec. 23 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³This section 26C was substituted for the original section 26C as inserted by sec. 23 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), by sec. 4 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

⁴These words in section 26C(1), (2), (3) and (4) were inserted by sec. 6(I), (2), (3) and (4) respectively of the Bengal Tenancy (Amendment) Act, 1947 (Ben. Act V of 1947).

of 1885.]

(Chapter V.—Occupancy-raiyats.—Section 26C.)

Demands Recovery Act, 1913, and no Court shall make a decree or order absolute for foreclosure of a mortgage of such a holding or portion or share thereof, until the purchaser or the mortgagee, as the case may be, files ¹[in the prescribed manner] a notice or notices and deposits a process fee or fees similar to those referred to in sub-section (1).

Ben. Act
III of
1913.

(4) If the transfer of a portion or share of such a holding be one to which the provisions of sub-section (1) of section 26F apply, there shall be filed ¹[in the prescribed manner] notices giving particulars of the transfer in the prescribed form together with process fees prescribed for the service thereof on all the co-sharer tenants of the said holding who are not parties to the transfer.

(5) The Court, Revenue-officer or registering officer, as the case may be, ²[shall, in the prescribed manner, serve the notices for which this section provides], and after receipt of such notice, the landlord or landlord's agent, as the case may be, shall not refuse to recognise the transferee as the tenant in respect of the holding or portion or share thereof transferred nor omit to enter the transferee's name in the landlord's rent-roll in place of that of the transferor or where only a share or a portion of the transferor's interest has been transferred, along with the name of the transferor :

Provided that such recognition shall not operate as an admission of the amount of rent or the area or any incident of such occupancy holding other than the existence of a right of occupancy therein or be deemed to constitute an express consent of the landlord to the division of the holding or to the distribution of the rent payable in respect thereof :

Provided further that if a transfer is subsequently set aside or modified by a competent authority, the party in whose favour such order has been made shall, unless such order has been passed in a suit, appeal or other proceedings to which the landlord was a party, deposit with the authority before whom the appropriate suit or proceeding was first initiated the prescribed fee for a notice on the landlord or his common agent, if any, describing the modifications made by such order, on receipt of which notice the landlord shall cause his rent-roll to be corrected accordingly.

(6) In this section—

- (a) "transferee", "purchaser" and "mortgagee" include their successors in interest,
- (b) "transfer" does not include partition or a lease, or, until a decree or order absolute for foreclosure is made, simple or usufructuary mortgage or mortgage by conditional sale, and

¹See foot-note 4 on page 560, *ante*.

²These words were substituted for the words "shall serve the notices provided in this section by registered post" by section 2 of the Bengal Tenancy (Amendment) Act, 1940 (Ben. Act XVIII of 1940).

(Chapter V.—Occupancy-raiyats.—Sections 26D—26F.)

- (c) “transferor” includes a person whose interest in a holding or portion or share thereof has terminated in the circumstances mentioned in sub-section (2) or sub-section (3).

26D, 26E. (*Landlord's transfer fee; Procedure on sale in execution of a decree, certificate or foreclosure of mortgage.*)—[Rep. by s. 5 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).]

Power of
co-sharer
of
transfer
or to
purchase.

26F. (1) Except in the case of—

- (a) a transfer to a co-sharer in the tenancy whose existing interest has accrued otherwise than by purchase, or
- (b) a transfer by exchange, lease, or partition, or
- (c) a transfer by bequest, or gift (including *heba* but excluding *heba-bil-ewaz* for any pecuniary consideration) in favour of the husband or wife of the testator or the donor or of any relation by consanguinity within three degrees of the testator or donor, or
- (d) a *wakf* in accordance with the provisions of the Muhammadan Law, or
- (e) a dedication for religious or charitable purposes without any reservation of pecuniary benefit for any individual—

one or more co-sharer tenants of the holding, a portion or share of which is transferred, may within four months of the service of the notice under section 26C, apply to the Court for the said portion or share to be transferred to himself or themselves.

Explanation.—A relation by consanguinity shall, for the purposes of this section, include a son adopted under the Hindu Law.

(2) The application shall be dismissed, unless the applicant or applicants at the time of making it, deposit in Court the amount of the consideration money or the value of the transferred portion or share of the holding, as stated in the said notice, together with compensation at the rate of ten *per centum* of such amount.

(3) If such deposit is made, the Court shall give notice to the transferee to appear within such period as it may fix and to state what other sums he has paid in respect of rent or in annulling incumbrances on the property since the date of the transfer. The Court shall then direct the applicants [including any person whose application under sub-section (4) has been granted] to deposit within such period as the Court thinks reasonable, such amount as the transferee has paid on such account, together with interest at the rate of six and a quarter *per centum per annum* with effect from the date on which the transferee made such payments.

¹This section 26F was substituted for the original section 26F as inserted by sec. 23 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), by sec. 6 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

of 1885.]

(Chapter V.—Occupancy-raiyats.—Section 26F.)

(4) (a) When an application has been made under sub-section (1), any of the remaining co-sharer tenants, including the transferee, if one of them, may within the period referred to in that sub-section or within one month of the date of the application, whichever is later, apply to join in the said application; any co-sharer tenant who has not applied under either sub-section (1) or this sub-section shall not have any further power of purchase under this section.

(b) Such application to join as a co-applicant shall be dismissed unless within such period as the Court may fix, not extending beyond the period referred to in clause (a), the applicant deposits in Court for payment to the applicant or applicants under sub-section (1), such sum as the Court shall determine as the share to be paid by him for the purposes of sub-section (2). If such deposit is made, the Court shall grant the application to join, and thereafter such applicant shall be deemed to be an applicant under sub-section (1).

(5) The Court shall thereafter make an order allowing the applications under sub-section (1) of such applicants [whether they applied under sub-section (1) or sub-section (4)] who have made the deposits required by this section and directing that the deposits made under sub-sections (2) and (3) shall be paid to the transferee or to such other persons as the Court thinks equitable.

(6) In making an order under sub-section (5) in favour of more than one co-sharer tenant, the Court may apportion the property comprised in the portion or share transferred among the applicants in such manner as it deems equitable after taking existing possession into consideration; the Court shall so apportion the said property or portion thereof on the request of any applicant, and in this case may require the applicant who makes such request to make, within such period as the Court may fix, such further deposits as the Court considers necessary for equitable distribution among the remaining applicants:

Provided that no apportionment ordered under this sub-section shall operate as a division of the holding.

(7) From the date of the making of the order under sub-section (5)—

(a) the right, title, and interest in the portion or share of the holding, accruing to the transferee from the transfer shall, subject to the provisions of section 22 and to any order passed under sub-section (6), be deemed to have vested, jointly and free from all incumbrances which have been annulled or created after the date of the transfer, in the co-sharer tenants, whose applications to purchase have been allowed under this section.

(b) the liability of the transferee for the rent due from him on account of the transfer shall cease, and

(c) the Court on further application of such applicant or applicants may place him or them, as the case may be, in possession of the property vested in them,

[Act VIII

(Chapter V.—Occupancy-raiyats.—Section 26G.)

(8) When a transferee is divested of his right, title and interest under the provisions of sub-section (7), he shall for the purposes of clauses (a), (c) and (d) of section 156 be deemed to be a *raiyat* ejected from his holding by proceedings for his ejection commencing on the date on which the application under sub-section (1) was made.

(9) Nothing in this section shall take away the right of preemption conferred on any person by Muhammadan Law.

(10) An appeal shall lie to the ordinary Civil Appellate Court from any order of a Court under this section.

(11) In this section "transfer" does not include simple or usufructuary mortgage or mortgage by conditional sale until a decree or order absolute for foreclosure is made.

Limita-
tion on
mortgage
by
occu-
pancy-
raiyat.

¹26G. (1) An occupancy-*raiyat* may enter into a complete usufructuary mortgage in respect of his holding or of a portion or share thereof for any period which does not and cannot, in any possible event, by any agreement, express or implied, exceed fifteen years ²[and notwithstanding anything contained in this Act or in any other law or in any contract, no other form of usufructuary mortgage so entered into after the commencement of the Bengal Tenancy (Amendment) Act, 1928, shall have any force or effect]. Ben. Act IV of 1928.

³(1a) Notwithstanding anything contained in this Act or in any other law for the time being in force or in any contract, every mortgage (including a mortgage by conditional sale) entered into by an occupancy-*raiyat* in respect of his holding or of a portion or share thereof in which possession of land is delivered to the mortgagee—

(a) which was so entered into before the commencement of the Bengal Tenancy (Amendment) Act, 1928, and was subsisting on or after the first day of August, 1937, or

(b) which, being other than a usufructuary mortgage having under sub-section (1) no force or effect, was so entered into after the commencement of the Bengal Tenancy (Amendment) Act, 1928, and before the commencement of the Bengal Tenancy (Amendment) Act, 1940, and was subsisting on or after the commencement of the Bengal Tenancy (Amendment) Act, 1940, shall be deemed to have taken effect as a complete usufructuary mortgage for the period mentioned in the instrument or for fifteen years, whichever is less. Ben. Act XVIII of 1940.

⁴(1b) Notwithstanding anything contained elsewhere in this Act or in any other law or in any contract, no mortgage (other than a complete usufructuary mortgage) entered into by

¹Section 26G was inserted by sec. 23 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words and figures were inserted by section 7(1) of the Bengal Tenancy (Amendment) Act 1938 (Ben. Act VI of 1938).

³Sub-section (1a) of section 26G was substituted for the original sub-section (1a) as inserted by section 7(2) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938), by section 3(1) of the Bengal Tenancy (Amendment) Act, 1940 (Ben. Act XVIII of 1940).

⁴Sub-section (1b) of section 26G was inserted by section 3(3), *ibid*.

of 1885.]

(Chapter V.—Occupancy-raiyats.—Section 26G.)

an occupancy-*raiyyat* in respect of his holding or of a portion or share thereof after the commencement of the Bengal Tenancy (Amendment) Act, 1940, in which possession of land is delivered to the mortgagee, shall have any force or effect. Ben. Act XVIII of 1940.

(2) Notwithstanding any contract to the contrary, ¹[entered into before or after the commencement of the Bengal Tenancy (Amendment) Act, 1928, such a complete usufructuary mortgage, or a mortgage referred to in sub-section (1a)] may be redeemed at any time before the expiry of the ²[periods referred to in sub-section (1) or sub-section (1a)]. Ben. Act IV of 1928.

(3) Every such ³[complete usufructuary mortgage entered into after the commencement of the Bengal Tenancy (Amendment) Act, 1928,] shall be registered under the Indian Registration Act, 1908. XVI of 1908.

(4) Notwithstanding anything contained elsewhere in this Act or in any other law, * * * * * no document creating or purporting to create—

(a) a complete usufructuary mortgage of the holding or of a portion or share of the holding of an occupancy-*raiyyat* for a period exceeding or which can exceed fifteen years, or

(b) an usufructuary mortgage of such holding, portion or share, other than a complete usufructuary mortgage, ⁵or

⁶(c) a mortgage of such holding, portion or share [other than a complete usufructuary mortgage or a usufructuary mortgage referred to in clause (b)] in which possession of land is delivered to the mortgagee,

shall be admitted to registration, nor shall any such document be received in evidence or acted on in any Court or by any public servant:

⁶[Provided that—

(i) a document referred to in clauses (a) or (b) which was executed before the commencement of the Bengal Tenancy (Amendment) Act, 1928, or

(ii) a document referred to in clause (c) which was executed before the commencement of the Bengal Tenancy (Amendment) Act, 1940,

¹These words, figures, brackets and letter were substituted for the words "such mortgage" by sec. 7(3)(a) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

²These words, figures, brackets and letter were substituted for the words "said period" by sec. 7(3)(b), *ibid*.

³These words, brackets and figures were substituted for the word "mortgage" by sec. 7(4), *ibid*.

⁴The words "no other form of usufructuary mortgage entered into by an occupancy-*raiyyat* in respect of his holding or portion or share thereof shall have any force or effect, and" were omitted by sec. 7(5)(a), *ibid*.

⁵The word "or" and clause (c) were inserted by sec. 3(3) of the Bengal Tenancy (Amendment) Act, 1940 (Ben. Act XVIII of 1940).

⁶This proviso to sub-section (4) was substituted by section 3(3)(c) of the Bengal Tenancy (Amendment) Act, 1940 (Ben. Act XVIII of 1940), for the original proviso as inserted by sec. 7(5)(b) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938),

[Act VIII]

(Chapter V.—Occupancy-raiyats.—Section 26G.)

may be so received in evidence or so acted upon as a complete usufructuary mortgage for the period mentioned therein or for fifteen years, whichever is less.]

¹(5) Notwithstanding anything contained in this Act or in any other law or in any contract, the consideration (with all interest thereon) for a complete usufructuary mortgage or for another form of usufructuary mortgage deemed under sub-section (1a) to have taken effect as a complete usufructuary mortgage, entered into by an occupancy-raiyat in respect of his holding or a portion or share thereof, shall be deemed to have been extinguished on the expiry of the period (a) mentioned in the instrument of the mortgage, or (b) of fifteen years, whichever is less, from the date of the registration of the instrument, or where there is no registered instrument, from the date of the mortgagee's entry into possession, and the mortgagor shall thereupon become entitled ²[to possession of the mortgaged property, and he may, if he is not forthwith given possession, apply to the Court to be restored to possession thereof and to be awarded such compensation as may appear to the Court to be equitable in respect of the period during which the mortgagee retained possession after the date on which the mortgagor became entitled to be restored to possession]:

Provided that, if in the case of such a mortgage subsisting on or after the first day of August 1937, the said period has, on the date of the commencement of the Bengal Tenancy (Amendment) Act, 1938, already expired, the mortgagor shall, immediately on the commencement of the said Act, become entitled to possession of the mortgaged ³[property], but he shall not be entitled to, nor shall the mortgagee be liable for, any compensation in respect of the mortgagee's possession from the date of the expiry of the said period to the date of the commencement of the said Act.

¹(6) An application under sub-section (5) shall be accompanied by a process fee of the prescribed amount for service of notice on the mortgagee, and the Court ⁴[to which] such an application is made, may, after service of such notice, award to the mortgagor such compensation as appears equitable ⁵[and

¹Sub-sections (5) and (6) of sec. 26G were inserted by sec. 7(6) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

²These words were substituted for the words "to possession of the mortgaged holding, and he may, if he is not forthwith given possession, apply to the Court or to a Revenue-officer to be restored thereto" by section 3(4)(a) of the Bengal Tenancy (Amendment) Act, 1940 (Ben. Act XVIII of 1940).

³The word "property" was substituted for the word "holding" by section 3(4)(b), *ibid*.

⁴The words "to which" were substituted for the words "or Revenue-officer to whom" by section 3(5)(a), *ibid*.

⁵These words were substituted by section 3(5)(b) of the Bengal Tenancy (Amendment) Act, 1940 (Ben. Act XVIII of 1940) for the following words:—

"in respect of the period during which the mortgagee retained possession after the date on which the mortgagor became entitled to be restored to possession and may pass an order restoring the possession of the land mortgaged to the mortgagor and such order shall have the effect of a decree of a civil court,"

of 1885.]

(Chapter V.—Occupancy-raiyats.—Section 26G.)

may pass an order restoring possession of the mortgaged property to the mortgagor].

¹(7) Any order made by a Court under sub-section (6) shall have the effect of a decree of a Civil Court and shall be subject to the provisions of the Code of Civil Procedure, 1908, in respect of appeal, revision or review:

Act V of 1908.

Provided that, notwithstanding anything contained in this or any other Act for the time being in force, a memorandum of appeal or application for review or revision under this sub-section shall be chargeable with a fee of twelve annas only.

¹(8) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force or in any contract, in respect of a mortgage by conditional sale subsisting on the date of the commencement of the Bengal Tenancy (Amendment) Act, 1940, in which possession of land has been delivered to the mortgagee—

Ben. Act XVIII of 1940.

(a) the mortgagor may at any time institute a suit for a declaration that the original principal, together with all interest due thereon, has been extinguished by the profits arising from the land in respect of which, and subsequent to the date on which, possession was so delivered, and for recovery of possession of the mortgaged property, and

(b) the mortgagee may, at any time after the expiry of fifteen years from the date of the instrument creating the mortgage, institute a suit for a declaration that the original principal, together with all interest due thereon, has not been extinguished by the profits arising from the land in respect of which, and subsequent to the date on which, possession was so delivered.

¹(9) In any suit instituted under sub-section (8) the Court may, if it thinks fit, re-open any transaction relating to the mortgage for the purpose of ascertaining whether the mortgagee in possession has derived from the mortgaged property profits sufficient to extinguish the original principal, together with simple interest thereon calculated at the rate of eight *per centum per annum*.

¹(10) In any suit instituted under sub-section (8), if the Court is satisfied that the original principal, together with all interest due thereon, has been extinguished by the profits arising from the mortgaged property or by any other means, it shall make a declaration to this effect and shall pass a decree restoring possession of the mortgaged property to the mortgagor.

¹Sub-sections (7) to (13) of sec. 26G were inserted by section 3(6) of the Bengal Tenancy (Amendment) Act, 1940 (Ben. Act XVIII of 1940.)

(Chapter V.—Occupancy-raiyats.—Sections 26H—29.)

¹(11) In any suit instituted under sub-section (8), if the Court is satisfied that the original principal, together with all interest due thereon, has not been extinguished by the profits arising from the mortgaged property or by any other means, it shall make a declaration to this effect, and may fix any sum, not exceeding the original principal, on payment of which the mortgagor shall be entitled to redeem the mortgaged property and may pass a decree accordingly, allowing the mortgagor a reasonable period within which to make such payment; and in any such decree the Court may further direct that, if such payment is not made within the period so fixed, the mortgagee shall retain possession of the mortgaged property for such period as may be specified in the decree and that, after the expiry of that period the original principal, together with all interest due thereon, shall be deemed to be extinguished and possession of the mortgaged property shall be restored to the mortgagor.

¹(12) Subject to the provisions of sub-section (13), the decision of the Court under sub-section (10) or sub-section (11) shall be final.

¹(13) The provisions of the Code of Civil Procedure, 1908, relating to appeals shall apply to all decrees or orders made under sub-sections (10) and (11), but notwithstanding anything contained in the Indian Limitation Act, 1908, or in this Act, the period of limitation for an appeal to the Court of a District Judge against any such decree or order shall be ninety days from the date of the decree or order appealed from. Act V of 1908.
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26H to 26J. (*Transfer of rent-free holdings; Interpretation and savings; Landlord's transfer fee with compensation in certain cases of transfer.*)—[Rep. by s. 8 of the Bengal Tenancy (Amendment) Act 1938 (Ben. Act VI of 1938).]

Enhancement of rent.

Presumption as to fair and equitable rent.

27. The rent for the time being payable by an occupancy-raiyat shall be presumed to be fair and equitable until the contrary is proved.

Restriction on enhancement of money rents.

28. Where an occupancy-raiyat pays his rent in money, his rent shall not be enhanced except as provided by this Act.

Enhancement of rent by contract.

29. The money-rent of an occupancy-raiyat may be enhanced by contract, subject to the following conditions:—

- (a) the contract must be in writing and registered;
- (b) the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the raiyat;

¹See foot-note 1 on page 567, ante.

of 1885.]

(Chapter V.—Occupancy-raiyats.—Section 30.)

- (c) the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract:

Provided as follows—

- (i) Nothing in clause (a) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.
- (ii) Nothing in clause (b) shall apply to a contract by which a *raiyat* binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit of which the *raiyat* is not otherwise entitled; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and, except when the *raiyat* is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.
- (iii) When a *raiyat* has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (b) shall prevent the *raiyat* from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.

30. The landlord of a holding held at a money-rent by an occupancy-*raiyat* may, subject to the provisions of this Act, institute a suit to enhance the rent on one or more of the following grounds (namely):—

- (a) that the rate of rent paid by the *raiyat* is below the prevailing rate paid by occupancy-*raiyats* for land of a similar description and with similar advantages in the same village or in neighbouring villages, and that there is no sufficient reason for his holding at so low a rate;
- (b) that there has been a rise in the average local prices of staple food-crops during the currency of the present rent;

¹This clause (a) in sec. 30 was substituted for the original clause (a) by sec. 2 of the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act III of 1898). The original clause ran thus:—

“(a) that the rate of rent paid by the *raiyat* is below the prevailing rate paid by occupancy-*raiyats* for land of a similar description and with similar advantages in the same village, and that there is no sufficient reason for his holding at so low a rate.”

(Chapter V.—Occupancy-raiyats.—Section 31.)

- (c) that the productive powers of the land held by the *raiyat* have been increased by an improvement effected by, or ¹[wholly or partly] at the expense of, the landlord during the currency of the present rent;
- (d) that the productive powers of the land held by the *raiyat* have been increased by fluvial action.

Explanation.—"Fluvial action" includes a change in the course of a river rendering irrigation from the river practicable when it was not previously practicable.

Rules as
to enhance-
ment on
ground of
prevailing
rate.

31. Where an enhancement is claimed on the ground that the rate of rent paid is below the prevailing rate--

- (a) in determining what is the prevailing rate the Court shall have regard to the rates generally paid during a period of not less than three years before the institution of the suit, and shall not decree an enhancement unless there is a substantial difference between the rate paid by the *raiyat* and the prevailing rate found by the Court;
- (b) If in the opinion of the Court the prevailing rate of rent cannot be satisfactorily ascertained without a local inquiry, the Court may direct that a local inquiry be held under ²[Order XXVI in Schedule I to, and section 78 of, the Code of Civil Procedure, 1908], ^{Act V of 1908.} by such Revenue-officer as the ³[State Government] may authorize in that behalf by rules made under ⁴[rule 9 in Order XXVI in Schedule I to the said Code];
- (c) in determining under this section the rate of rent payable by a *raiyat* his caste shall not be taken into consideration, unless it is proved that by local custom caste is taken into account in determining the rate; and whenever it is found that by local custom any description of *raiyats* hold land at favourable rates of rent, the rate shall be determined in accordance with that custom;
- (d) in ascertaining the prevailing rate of rent the amount of any enhancement authorized on account of a landlord's improvement shall not be taken into consideration;

¹The words "wholly or partly" were inserted by sec. 24 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words and figures were substituted for the words and figures "Chapter XXV of the Code of Civil Procedure" by sec. 128, *ibid.*

³See foot-note 3 on page 544, *ante*.

⁴These words and figures were substituted for the words and figures "section 392 of the said Code" by sec. 128 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885]

(Chapter V.—Occupancy-raiyats.—Section 31A.)

- ¹(e) if a favourable rate has been determined under clause (c) for any description of *raiyats*, such rate may, if the Court thinks fit, be left out of consideration in ascertaining the prevailing rate;
- ¹(f) if the holding is held at a lump rental, the determination of the rent to be paid may be made by ascertaining the different classes of land comprised within the holding, and applying to the area of each class the prevailing rate paid on that class within the village or neighbouring villages.

²31A. (1) In any district or part of a district to which this sub-section is extended by the [State Government] by notification in the [Official Gazette], whenever the prevailing rate for any class of land is to be ascertained under section 30, clause (a), by an examination of the rates at which lands of a similar description and with similar advantages are held within any village or villages, the highest of such rates at which and at rates higher than which the larger portion of those lands is held may be taken to be the prevailing rate.

What may be taken in certain districts to be the "prevailing rate."

Illustrations.

(a) The rates at which land of a similar description and with similar advantages is held in a village are as follows:—

Bighas.				Rs. a. p.
100	...	...	at	1 0 0
200	...	...	"	1 8 0
150	...	...	"	1 12 0
100	...	...	"	2 0 0
150	...	...	"	2 4 0

TOTAL 700

Then Rs. 2-4 is not the prevailing rate, because only 150 *bighas*, or less than half, are held at that rate. Rs. 2 is not the prevailing rate, because 250 *bighas*, or less than half, are held at that or a higher rate. Re. 1-12 is the prevailing rate, because 400 *bighas*, or more than half, are held either at this or a higher rate, and this is the highest rate at which, and at rates higher than which, more than half the land is held.

¹Clauses (e) and (f) were inserted by sec. 3 of the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act III of 1898).

²Section 31A was inserted by sec. 4, *ibid*.

³See foot-note 3 on page 544, *ante*.

⁴These words within square brackets were substituted for the words "*Calcutta Gazette*" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

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(Chapter V.—Occupancy-raiyats.—Sections 31B, 32.)

(b) The rates at which land of a similar description and with similar advantages is held in a village are as follow:—

<i>Bighas.</i>		Rs. a. p.
100	at	1 0 0
250		1 4 0
150		1 8 0
150		1 12 0
50		2 0 0
TOTAL	700	

Then for the reasons given in illustration (a), neither Rs. 2 nor Re. 1-12 is the prevailing rate, nor is Re. 1-8 the prevailing rate, because only 550 *bighas* (exactly half) are held at Re. 1-8 or at rates higher than Re. 1-8. In this case Re. 1-4 is the prevailing rate, because more than half the lands are held at Re. 1-4 or higher rates and this is the highest rate at which, and at rates higher than which, more than half the land is held.

(2) The '[State Government] may, by a like notification, withdraw sub-section (1) from any district or part of a district to which it has been extended as aforesaid.

Limit to
enhance-
ment of
prevailing
rate.

²31B. When the prevailing rate has once been determined by a Revenue-officer under Chapter X or by a Civil Court in any suit under this Act, it shall not be liable to enhancement save on the ground and to the extent specified in section 30, clause (b), and section 32.

Rules as to
enhance-
ment on
ground of
rise in
prices.

32. Where an enhancement is claimed on the ground of a rise in prices—

(a) the Court shall compare the average prices during the decennial period immediately preceding the institution of the suit with the average prices during such other decennial period as it may appear equitable and practicable to take for comparison;

(b) the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last decennial period bear to the average prices during the previous decennial period taken for purposes of comparison: provided that, in calculating this proportion, the average prices during the later period shall be reduced by one-third of their excess over the average prices during the earlier period;

¹See foot-note 3 on page 544, *ante*.

²Section 31B was inserted by sec. 4 of the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act III of 1898).

[of 1885.]

(Chapter V.—Occupancy-raiyats.—Sections 33—36.)

- (c) if in the opinion of the Court it is not practicable to take the decennial periods prescribed in clause (a) the Court may, in its discretion, substitute any shorter periods therefor.

33. (1) Where an enhancement is claimed on the ground of a landlord's improvement—

Rules as to enhancement on ground of landlord's improvement.

- (a) the Court shall not grant an enhancement unless the improvement has been registered in accordance with this Act;
- (b) in determining the amount of enhancement the Court shall have regard to—
- (i) the increase in the productive powers of the land caused or likely to be caused by the improvement,
- (ii) the cost of the improvement,
- (iii) the cost of the cultivation required for utilizing the improvement, and
- (iv) the existing rent and the ability of the land to bear a higher rent.

(2) A decree under this section shall, on the application of the tenant or his successor-in-interest, be subject to reconsideration in the event of the improvement not producing or ceasing to produce the estimated effect.

34. Where an enhancement is claimed on the ground of an increase in productive powers due to fluvial action—

Rules as to enhancement on ground of increase in productive powers due to fluvial action.

- (a) the court shall not take into account any increase which is merely temporary or casual:
- (b) the Court may enhance the rent to such an amount as it may deem fair and equitable, but not so as to give the landlord more than one-half of the value of the net increase in the produce of the land.

35. Notwithstanding anything in [sections 30 to 34], the Court shall not in any case decree any enhancement which is under the circumstances of the case unfair or inequitable.

Enhancement by suit to be fair and equitable.

36. If the Court passing a decree for enhancement considers that the immediate enforcement of the decree to its full extent will be attended with hardship to the *raiyat*, it may direct that the enhancement shall take effect gradually at such times and by such instalments extending over a period not exceeding

Power to order progressive enhancement.

¹The words and figures "sections 30 to 34" were substituted for the words "the foregoing sections" by sec. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²This section 36 was substituted for the original section by sec. 25, *ibid.*

(Chapter V.—Occupancy-raiyats.—Sections 37, 38.)

ten years as the Court may fix in this behalf. For the purposes of section 37, however, the full rent shall be deemed to have come into force from the date of the decree.

Limitation
of right to
bring
successive
enhance-
ment
suits.

37. (1) A suit instituted for the enhancement of the rent of a holding on the ground that the rate of rent paid is below the prevailing rate, or on the ground of a rise in prices, shall not be entertained if within the fifteen years next preceding its institution the rent of the holding has been enhanced by a contract made after the second day of March, 1883, or if* * * a decree has been passed under this Act or any enactment repealed by this Act enhancing the rent on either of the grounds aforesaid or on any ground corresponding thereto or dismissing the suit on the merits.

(2) Nothing in this section shall affect the provisions of Act V of 1908 [rule 1 of Order XXIII in Schedule I to the Code of Civil Procedure, 1908].

Reduction of rent.

Reduction
of rent.

38. (1) An occupancy-raiyat¹* * * may institute a suit for the reduction of his rent on "[one or more of] the following grounds, and, except as hereinafter provided in the case of a diminution of the area of the holding, not otherwise (namely):—

- (a) on the ground that the soil of the holding has without the fault of the *raiyat* become permanently deteriorated by a deposit of sand or other specific cause, sudden or gradual;²*
- (b) on the ground that there has been a fall, not due to a temporary cause, in the average local prices of staple food-crops during the currency of the present rent,³
[or
- (c) on the ground that the landlord has refused or neglected to carry out the arrangements, in respect of the irrigation or the maintenance of embankments which were in force at the time when the rent was settled, and the soil of the holding has thereby deteriorated.

¹The words and figures "within the said period of fifteen years the rent has been commuted under section 40; or" were omitted by sec. 26 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words and figures were substituted for the words and figures "section 373 of the Code of Civil Procedure" by sec. 128, *ibid*.

³The words "holding at a money rent" were omitted by sec. 27(i), *ibid*.

⁴The words "one or more of" within square brackets were inserted by sec. 27(ii), *ibid*.

⁵The word "or" was omitted by sec. 27(ii), *ibid*.

⁶This portion within square brackets in section 38, namely, the addition of the word "or" in clause (b) and the insertion of new clause (c) with "Explanation" was made by sec. 27(iii), *ibid*.

of 1885.]

(Chapter V.—Occupancy-raiyats.—Section 39.)

Explanation.—A suit for reduction of rent properly framed for the purpose may be instituted or a plea for reduction of rent taken by any one among a number of co-sharer tenants of a holding].

(2) In any suit instituted under this section, the Court may direct such reduction of the rent as it thinks fair and equitable.

Price-lists.

39. (1) The Collector of every district shall prepare, monthly, or at shorter intervals, periodical lists of the market-prices of staple food-crops grown in such local areas as the ¹[State Government] may from time to time direct, and shall submit them to the Board of Revenue for approval or revision. Price-lists of staple food-crops.

(2) The Collector may, if so directed by the ¹[State Government], prepare for any local area like price-lists relating to such past times as the ¹[State Government] thinks fit, and shall submit the lists so prepared to the Board of Revenue for approval or revision.

(3) The Collector shall, one month before submitting a price-list to the Board of Revenue under this section, publish it in the prescribed manner within the local area to which it relates, and if any landlord or tenant of land within the local area, within the said period of one month, presents to him in writing any objection to the list, he shall submit the same to the Board of Revenue with the list.

(4) The price-lists shall, when approved or revised by the Board of Revenue, be published in the *Official Gazette*; and any manifest error in any such list discovered after its publication may be corrected by the Collector with the sanction of the Board of Revenue.

(5) The ¹[State Government] shall cause to be compiled from the periodical lists prepared under this section lists of the average prices prevailing throughout each year, and shall cause them to be published annually in the *Official Gazette*.

(6) In any proceedings under this Chapter for an enhancement or reduction of rent on the ground of a rise or fall in prices, the Court shall refer to the lists published under this section, and shall presume that the prices shown in the lists prepared for any year subsequent to the passing of this Act are correct ²[and may presume that the prices shown in the lists prepared for any year prior to the passing of this Act are correct] unless and until it is proved that they are incorrect.

¹See foot-note 3 on page 544, *ante*.

²The words "and may presume that the prices shown in the lists prepared for any year prior to the passing of this Act are correct" were inserted by sec. 5 of the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act III of 1898).

(Chapter V.—Occupancy-raiyats.—Chapter VI.—Non-occupancy-raiyats.—Sections 40—44.)

(7) The [State Government] ^{2*} * * shall make rules for determining what are to be deemed staple food-crops in any local area and for the guidance of officers preparing price-lists under this section.

[^{2*} *]

40. [Commutation of rent payable in kind.]—Rep. by s. 28 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

40A. [Period for which commuted rents are to remain unaltered.]—Rep. by s. 29 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

CHAPTER VI.

Non-occupancy-raiyats.

Applica-
tion of
Chapter.

41. This Chapter shall apply to *raiyats* not having a right of enhancement, who are in this Act referred to as non-occupancy-raiyats.

Initial
rent of
non-occu-
pancy-
raiyat.

42. When a non-occupancy-raiyat is admitted to the occupation of land, he shall become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission.

Conditions
of enhance-
ment of
rent.

44¹. The rent of a non-occupancy-raiyat shall not be enhanced except by registered agreement or by agreement under section 46:

Provided that nothing in this section shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

Grounds
on which
non-occu-
pancy-
raiyat
may be
ejected.

44. A non-occupancy-raiyat shall, subject to the provisions of this Act, be liable to ejectment on one or more of the following grounds, and not otherwise (namely):—

(a) on the ground that he has failed to pay an arrear of rent;

¹See foot-note 3 on page 544, *ante*.

²The words "subject to the control of the Governor-General in Council" in sec. 39(7) were repealed by sec. 2 of, and the First Schedule to, the Devolution Act, 1920 (XXXVIII of 1920), and are omitted.

³The heading "Commutation" was repealed by sec. 28 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁴Chapter VI does not apply to certain lands—see sec. 116.

of 1885.]

(Chapter VI.—Non-occupancy-raiyats.—Sections 45, 46.)

- (b) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected;
- (c) where he has been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired;
- (d) on the ground that he has refused to agree to pay a fair and equitable rent determined under section 46, or that the term for which he is entitled to hold at such a rent has expired.

45. (*Conditions of ejectment on ground of expiration of lease.*)—Rep. in Western Bengal by s. 2 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and in Eastern Bengal by s. 2 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

46. (1) A suit for ejectment on the ground of refusal to agree to an enhancement of rent shall not be instituted against a non-occupancy-*raiyat* unless the landlord has tendered to the *raiyat* ¹[a draft of an agreement] to pay the enhanced rent, and the *raiyat* has within three months before the institution of the suit refused to execute the agreement.

Conditions of ejectment on ground of refusal to agree to enhancement.

(2) A landlord desiring to tender ¹[a draft of an agreement] to a *raiyat* under this section may file it in the office of such Court or officer as the ²[State Government] appoints in this behalf for service on the *raiyat*. The Court or officer shall forthwith cause it to be served on the *raiyat* in the prescribed manner, and when it has been so served it shall for the purposes of this section be deemed to have been tendered.

(3) If a *raiyat* on whom ¹[a draft of an agreement] has been served under sub-section (2) ²[executes the agreement], and within one month from the date of service files it in the office from which it issued, it shall take effect from the commencement of the agricultural year next following.

(4) When an agreement has been executed and filed by a *raiyat* under sub-section (3), the Court or officer in whose office it is so filed shall forthwith cause a notice of its being so executed and filed to be served on the landlord in the prescribed manner.

¹The words "a draft of an agreement" were substituted for the words "an agreement" by sec. 30(a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act VI of 1928).

²See foot-note 3 on page 544, ante.

³The words "executes the agreement" were substituted for the words "executes it" by sec. 30(b) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

(Chapter VI.—Non-occupancy-raiyats.—Chapter VII.—Under-raiyats.—Sections 47, 47A.)

(5) If the *raiyat* does not execute the agreement and file it under sub-section (3), he shall be deemed for the purposes of this section to have refused to execute it.

(6) If a *raiyat* refuses to execute an agreement ¹[of which a draft has been] tendered to him under this section, and the landlord thereupon institutes a suit to eject him, the Court shall determine what rent is fair and equitable for the holding.

(7) If the *raiyat* agrees to pay the rent so determined, he shall be entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement, but on the expiration of that term shall be liable to ejectment ²[subject to the provisions of this Act], unless he has acquired a right of occupancy.

(8) If the *raiyat* does not agree to pay the rent so determined, the Court shall pass a decree for ejectment.

(9) In determining what rent is fair and equitable the Court shall have regard to the rents generally paid by *raiyats* for land of a similar description and with like advantages in the same village.

(10) A decree for ejectment passed under this section shall take effect from the end of the agricultural year in which it is passed.

Explanation of
'admitted to occupation.'

47. Where a *raiyat* has been in occupation of land and a lease is executed with a view to a continuance of his occupation, he is not to be deemed to be admitted to occupation by that lease for the purposes of this Chapter, notwithstanding that the lease may purport to admit him to occupation.

CHAPTER VII.

Under-raiyats.

Application of
Chapter VII to
under-raiyats.

³47A. The provisions of this Chapter shall apply to all under-raiyats whether their tenancies were created before or after the commencement of the Bengal Tenancy (Amendment) Act, 1928. Ben. Act IV of 1928.

¹The words "of which a draft has been" were inserted by sec. 30(c) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²The words "subject to the provisions of this Act" were substituted for the words "under the conditions mentioned in the last foregoing section" by sec. 30(d), *ibid*.

³This section 47A was inserted by sec. 9 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

of 1885]

(Chapter VII.—Under-raiyats.—Sections 48—48B.)

48. When an under-*raiyat* is admitted to the occupation of land, he shall, subject to the provisions of this Act, become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission: Liability of under-*raiyat* to pay rent.

Provided that the rent or rate of rent agreed upon shall not be less than the rent or the rate of rent payable by the *raiyat* to his landlord.

¹48A. The rent of an under-*raiyat* shall not be enhanced except under the provisions of ²[sections 48B or 48D or section 48G, as the case may be]. Enhancement of rent of under-*raiyat*.

¹48B. (1) The money rent of an under-*raiyat* may be enhanced by a written registered contract: Enhancement by contract.

Provided that the rent shall not be enhanced so as to exceed by more than four annas in the rupee the rent previously payable by the under-*raiyat*, except in the following cases, namely:—

(i) When an under-*raiyat* binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding wholly or partly at the cost of ³[his landlord] and to the benefit of which the under-*raiyat* is not otherwise entitled, but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected and except when the under-*raiyat* is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.

(ii) When an under-*raiyat* has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of his landlord, and the under-*raiyat* agrees, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.

(2) The rent fixed by a contract under the provisions of subsection (1), shall not be liable to enhancement during a period of fifteen years from the date of such contract.

¹Sections 48, 48A, 48B, 48C, 48D, 48E, 48F, 48G and 48H (now repealed) and section 49 were substituted for original sections 48 and 49 by sec. 31 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words, figures and letters were substituted for the words, figures and letters "section 48B or section 48D" by sec. 10 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

³These words were substituted for the words "the *raiyat*" by sec. 11, *ibid*.

(Chapter VII.—Under-raiyats.—Sections 48C—48D.)

Ejection
of under-
raiyats.

48C. An under-raiyat shall, subject to the provisions of this Act, be liable to ejection on one or more of the following grounds, and not otherwise, namely:—

- (a) on the ground that he has failed to pay an arrear of rent:

Provided that, if the under-raiyat is one whose rent is payable in terms of cash and not of produce and he pays through the Court all arrears up to date together with such interest and damages as the Court may award, he shall not be liable to ejection on account of such arrears;

- (b) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act and on the breach of which he is, under the terms of the contract between himself and his landlord, liable to be ejected;
- (c) on the ground that the term of his lease has expired, when he holds the land under a written lease;
- (d) on the ground that the tenancy has been terminated by his landlord by one year's notice expiring at the end of the agricultural year when he holds the land otherwise than under a written lease; or
- (e) on the ground that he does not agree to pay the rent determined by the Court under sub-section (4) of section 48D:

Provided that an under-raiyat shall not be liable to ejection on the grounds specified in clause (c) or clause (d)—

- (i) if the under-raiyat has—

(1) been admitted in a document by the landlord to have a permanent and heritable right to his land, or

(2) been in possession of his land for a continuous period of twelve years whether before or after or partly before and partly after the commencement of the Bengal Tenancy (Amendment) Act, 1928, or has a homestead thereon.

Ben. Act
IV of 192

- (ii) in the case of under-raiyats other than those described in clause (i) of this proviso unless the landlord has satisfied the Court that he requires the land for his homestead or for cultivation by himself or by members of his family or by hired servants or with aid of parties.

Enhance-
ment by
suit.

48D. (1) The landlord of an under-raiyat may, subject to the provisions of this Act, institute a suit to enhance the rent of the under-raiyat, and to eject the under-raiyat if he refuses to pay the rent determined by the Court.

¹See foot-note 1 on page 579, ante.

of 1885.]

(Chapter VIII.—Under-raiyats.—Sections 48E—48G.)

(2) The Court shall determine what rent is fair and equitable for the holding: provided that the rate of rent so determined shall not in the case of a money rent exceed one-third of the value of the average estimated produce of the land for the decennial period preceding the institution of the suit and in the case of a produce rent one-half of such produce.

(3) The Court shall thereupon inquire from the under-raiyat if he agrees to pay the rent so determined. If the under-raiyat agrees, he shall be entitled to remain in occupation of his holding at that rent for a term of fifteen years from the date of the agreement.

(4) If the under-raiyat does not agree to pay the rent so determined, the Court shall pass a decree for ejectment.

(5) A decree for ejectment passed under this section shall take effect from the end of the agricultural year in which it is passed.

¹48E. When a "[landlord] has ejected an under-raiyat on the grounds specified in clause (c) or clause (d) of section 48C, the under-raiyat may apply to the Court by which the decree for ejectment was passed to be put in possession of the holding from which he was ejected by way of restitution if, within four years of the ejectment, the landlord sublets the holding or any portion thereof; and thereupon the Court may, if satisfied after inquiry that the landlord did not use the land for his homestead, or for cultivation by himself or by hired servants or by members of his family or with the aid of partners, order a recovery of possession on such terms, if any, with respect to compensation to the persons injured as to the Court may seem just.

Applica-
tion for
restitution
by under-
raiyat.

¹48F. The holding of an under-raiyat shall descend in the same manner as other immovable property, but "[subject to the provisions of sub-section (2) of section 48G], shall not be transferable except with the consent of the landlord.

Incidents
of holding
of under-
raiyat.

¹48G.—(1) Every under-raiyat who, immediately before the commencement of the Bengal Tenancy (Amendment) Act, 1928, had by custom a right of occupancy in any land, shall have a right of occupancy in that land.

Occu-
pancy-
rights of
under-
raiyat.

Ben. Act
IV of
1928.

¹See foot-note. 1 on page 579, ante.

²The word "landlord" was substituted for the word "raiyat" by sec. 12 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

³These words, figures, brackets and letter were inserted by sec. 13, *ibid.*

(Chapter VII.—Under-raiyats.—Chapter VIIA.—Restrictions on Alienation of Land by Aborigines.—Sections 48H—49A.)

(2) Every under-raiyat who has a right of occupancy in his holding shall have, as regards his immediate landlord, all the rights and liabilities of a raiyat with a right of occupancy, as set forth in—

(i) Chapter V other than those conferred or imposed by sections 20, 21 [and 22],

(ii) sections 65, ²*116 and 178, so far as possible, and

(iii) Chapter XIV,

and his holding, as against such landlord, shall be deemed to be the holding of an occupancy-raiyat for the purposes of the said sections or Chapters.

(3) The interest of an under-raiyat who has a right of occupancy in his holding shall not be deemed to be protected interest under clause (d) of section 160.

(4) The provisions of sections 48A to 48E shall not apply to an under-raiyat who has a right of occupancy in his holding, in so far as such provisions are inconsistent with this section.

³48H. (Provision as to salami.)—[Rep. by s. 15 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).]

Mortgage
by under-
raiyat.

³49. (1) Notwithstanding anything contained in section 48F an under-raiyat may enter into a complete usufructuary mortgage in the same manner and on the same conditions as are provided in section 26G for occupancy-raiyats and the provisions of that section shall apply so far as may be to under-raiyats¹ as if they were occupancy-raiyats.

(2) Such mortgage shall not be binding upon the landlord of the under-raiyat.

CHAPTER VIIA.

Restrictions on Alienation of Land by Aborigines.

Applica-
tion of
Chapter.

⁴49A. (1) This Chapter shall apply in the first instance only to the Sonthals of the districts of Birbhum, Bankura and Midnapore, who shall be deemed to be aborigines for the purposes of this Chapter.

¹This word and figure were substituted for the word, figures, and letters "22, 26A to 26J" by sec. 14(1) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

²The figures "86" were omitted by sec. 14(2), *ibid*.

³See foot-note 1 on page 579, *ante*.

⁴Chapter VIIA (sections 49A to 49O—section 49K was subsequently substituted), was inserted by sec. 2 of the Bengal Tenancy (Amendment) Act, 1918 (Ben. Act II of 1918).

of 1885.]

(Chapter VIIA.—Restrictions on Alienation of Land by
Aboriginals.—Sections 49B—49D.)

(2)* The ¹[State Government] may, from time to time, by notification published in the ²[Official Gazette], declare that the provisions of this Chapter shall, in any district or local area, apply to such of the following aboriginal castes or tribes as may be specified in the notification, and that such castes or tribes shall be deemed to be aboriginals for the purposes of this Chapter, namely:—

Sonthals of other districts, Bhuiyas, Bhumijes, ³[Dalus], Garos, Gonds, Hadis, Hajangs, Hos, Kharias, Kharwars, Kochs (Dacca Division), Koras, Maghs (Bakarganj District), Mal and Sauria Paharias, Meches, Mundas, ⁴[Mundais], Oraons and Turis.

(3) The publication of a notification under sub-section (2) shall be conclusive evidence that the provisions of this Chapter have been duly applied to such castes or tribes.

(4) The ¹[State Government] may, by a like notification, declare that this Chapter shall, in any district or local area, cease to apply to the Sonthals mentioned in sub-section (1) or to any caste or tribe to which it may have been applied under sub-section (2).

⁵(5) Notwithstanding anything elsewhere contained in this Act, the ¹[State Government] may, in the manner provided for in sub-sections (2) and (4), declare that the provisions of this Chapter applicable to aboriginal *raiyyats* shall apply, so far as may be, or cease to apply to *raiyyats* within such colonisation areas in the Sundarbans as may be specified in the notification.

⁶49B. No transfer by an aboriginal tenure-holder, *raiyyat* or under-*raiyyat* of his right in his tenure or holding, or in any portion thereof, by private sale, gift, will, mortgage, lease or any contract or agreement, shall be valid to any extent except as provided in this Chapter. Restrictions on transfer of tenant rights.

⁶49C. An aboriginal tenure-holder may grant a lease to another aboriginal, to hold the land as a tenure-holder, or to cultivate it as a *raiyyat*, in accordance with the provisions of this Act. Lease by tenure-holder.

⁶49D. * * * An aboriginal *raiyyat* may sub-let his holding to another aboriginal to cultivate it as an under-*raiyyat*. Sub-letting by *raiyyat*.

¹See foot-note 3 on page 544, *ante*.

²See foot-note 5 on page 544, *ante*.

³The word "Dalus" was inserted by sec. 16(a) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

⁴The word "Mundais" was inserted by sec. 16(b), *ibid*.

⁵This sub-section was inserted by sec. 32 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act VI of 1928).

⁶See foot-note 4 on page 582, *ante*.

⁷The words, figures and letter "Subject to the provisions of section 48H," were omitted by sec. 17 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938). The figures and letter "48H" were originally substituted for the figures "85" by sec. 6 of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

(Chapter VIIA.—Restrictions on Alienation of Land by
Aboriginals.—Sections 49E, 49F.)

Usufructu-
ary mortgage
by tenure-
holder,
raiyat or
under-
raiyat.

¹49E. (1) An aboriginal tenure-holder, *raiyat* or under-*raiyat* may enter with another aboriginal into a complete usufructuary mortgage in respect of any land under his own cultivation, for any period which does not and cannot, in any possible event, by an agreement, express or implied, exceed seven years, or the period of his own right, whichever is less:

Provided that every mortgage so entered into shall be registered under the Indian Registration Act, 1908. XVI of 1908.

(2) An aboriginal tenant's power to mortgage his land shall be restricted to only one form of mortgage, namely, a complete usufructuary mortgage.

Applica-
tion to
Collector
for trans-
fer in
certain
cases.

¹49F. (1) If in any case—

(a) an aboriginal tenure-holder is unable to lease his land as provided in section 49C, or an aboriginal *raiyat* is unable to sub-let his holding as provided in section 49D, or an aboriginal tenure-holder, *raiyat* or under-*raiyat* is unable to mortgage his land to another aboriginal as provided in section 49E, sub-section (1), or

(b) an aboriginal tenure-holder, *raiyat* or under-*raiyat* desires to transfer his land, or any portion thereof, by private sale, gift or will to any person,

he may apply to the Collector for permission, in case (a), to transfer the same to a person who is not an aboriginal, or in case (b), to transfer the same by private sale, gift or will to any person; and the Collector may pass such order on the application as he thinks fit.

(2) Every such transfer shall be made by registered deed, and before the deed is registered and the land transferred, the written consent of the Collector shall be obtained to the terms of the deed and to the transfer.

(3) Nothing in this section shall validate a transfer of any land or portion thereof which, by the terms upon which it is held, or by any law or local custom, would not be transferable except for the provisions of this section.

¹See foot-note 4 on page 582, *ante*.

²The "explanation" was omitted by sec. 33 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Chapter VIIA.—Restrictions on Alienation of Land by
Aboriginals.—Sections 49G—49J.)

49. No transfer by an aboriginal tenure-holder, *raiyat* or under-*raiyat* in contravention of the provisions of this Chapter shall be registered or in any way recognised as valid by any Court, whether in the exercise of civil, criminal or revenue jurisdiction.

Courts not to register, or recognize as valid, transfers in contravention of this Chapter.

49H. (1) If a transfer of a tenure or holding, or any portion thereof, is made by an aboriginal tenure-holder, *raiyat* or under-*raiyat* in contravention of the provisions of section 49B, or if the transferee has continued or is in possession in contravention of the provisions of section 49E, sub-section (1), or section 49F, as the case may be, the Collector may, on his own initiative or on application made in that behalf, by an order in writing, eject the transferee from such tenure, holding or portion:

Power to Collector to set aside improper transfers by tenure-holder, *raiyat* or under-*raiyat*.

Provided that—

(a) the transferee whom it is proposed to eject has not been in continuous possession in contravention of this Act for twelve years, and

(b) he is given an opportunity of showing cause against the order of ejectment.

(2) When the Collector has passed any order under sub-section (1), he shall either—

(a) restore the transferred land to the aboriginal tenure-holder, *raiyat* or under-*raiyat*, or his heir or legal representative, or

(b) failing the transferor or his heir or legal representative, declare that the right of settlement is vested in the landlord subject to the provisions of section 49J; provided that if the right is not exercised within one year, the Collector may, within six months, settle the land on behalf of the landlord on such terms as he deems fit with an aboriginal; and, if the Collector is unable to make such settlement within the said period, an unrestricted right of settlement will vest in the landlord.

49J. (1) Whenever—

(a) the right of settlement of any tenancy, or any portion thereof, is declared to be vested in the landlord under clause (b) of sub-section (2) of section 49H, or

Resettlement of certain tenancies.

¹See foot-note 4 on page 582, *ante*.

(Chapter VIIA.—Restrictions on Alienation of Land by
Aboriginals.—Section 49 K.)

- (b) an aboriginal tenant surrenders his tenancy, or a portion thereof, or abandons his residence and ceases to hold his tenancy,

the landlord may, subject to the provisions of '[sections 86, 86A and 87],—

- (i) settle the tenancy, or a portion thereof, with an aboriginal, or
- (ii) with the approval of the Collector in writing, settle the same with a person who is not an aboriginal or retain it in his own possession: provided that such approval shall not be withheld if the Collector is satisfied that the surrender or abandonment referred to in this sub-section is not made with the object of evading the provisions of section 49B, 49E or 49F.

(2) If any landlord resettles or otherwise deals with any tenancy as aforesaid in contravention of the provisions of sub-section (1), the Collector may take action, so far as may be, in accordance with the provisions of section 49H.

Restriction
on the sale
of tenant's
rights
under
order of
Court.

²49K. (1) Notwithstanding anything contained in this Act, no decree or order shall be passed by any Court for the sale of the right of an aboriginal tenure-holder, *raiyat* or under-*raiyat* in his tenure or holding, or in any portion thereof, nor shall any such right be sold in execution of any decree or order:

Provided that any tenure or holding belonging to an aboriginal may be sold in accordance with the provisions of sub-section (2) in execution of a decree of a competent Court to recover an arrear of rent which has accrued in respect of the tenure or holding.

(2) When a decree for an arrear of rent which accrued in respect of a tenure or holding of an aboriginal tenant has been passed, such decree shall be executable solely by the Collector and the Court shall, on application made in this behalf by the decree-holder, send the decree to the Collector for execution and the Collector in execution of the said decree may, in his discretion,—

¹These words, figures and letter in sec. 49J(1) were substituted for the words and figures "sections 86 and 87" by sec. 7 of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

²This section was substituted for the original section by section 2 of, and the First Schedule to, the West Bengal Laws (Amendment and Repeal) Act, 1947 (West Ben. Act XII of 1947).

This amendment and the amendments made in sections 49L and 49M are re-enactments of the identical amendments made by the Bengal Tenancy (Amendment) Act, 1945 (Ben. Act XII of 1945), which Act ceased to exist under section 93(4) of the Government of India Act, 1935.

of 1885.]

(Chapter VIIA.—Restrictions on Alienation of Land by
Aboriginals.—Section 49 K.)

- (b) eject the said aboriginal tenant and settle the said tenure or holding or a portion thereof with another aboriginal tenant on payment of the decretal amount by such other aboriginal tenant, or
- (c) place the landlord in possession of the said tenure or holding or a portion thereof for a period not exceeding seven years;

and if the Collector, in executing a decree under this sub-section,—

- (i) sells the said tenure or holding, he shall, subject to the provisions of sub-section (3), follow the procedure applicable to sales of land by a Civil Court in execution of decrees for arrears of rent;
- (ii) places the landlord in possession of the said tenure or holding or any portion thereof for any period, the decree shall, at the end of such period, be deemed to have been satisfied in full and the Collector may then restore the said tenure or holding or portion to the aboriginal tenure-holder, *raiyat* or *under-raiyat*, as the case may be, against whom the said decree was executed or to the successor-in-interest of such tenure-holder, *raiyat* or *under-raiyat* or may settle it with another aboriginal:

Provided that no portion of a tenure or holding shall be sold or settled by the Collector under this sub-section if such sale or settlement would result in bringing the rent for such portion below two rupees in the case of a tenure or one rupee in the case of a holding.

(3)(a) Before issuing a proclamation for the sale of any tenure or holding in execution of a decree referred to in sub-section (2), the Collector shall after hearing the decree-holder and the judgment-debtor divide the tenure or holding into such number of smaller areas to be specified as lots as the Collector thinks fit for the purpose of being sold separately and shall specify the lots in the proclamation;

(b) when any tenure or holding has been advertised for sale by the issue of a proclamation referred to in clause (a), each lot specified in the proclamation shall be put up to auction separately and as soon as the total amount of the bid reaches a sum sufficient to liquidate the amount of the decree and costs including the costs of sale, the sale shall be stopped and no further lots shall be knocked down, and if even after all the lots have been separately put up to auction the total amount of the bid does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, all the lots shall be put up to auction together.

(4) Before restoring or settling a tenure or holding under sub-section (2), the Collector may, if he is satisfied that the rent

(Chapter VIIA.—Restrictions on Alienation of Land by
Aboriginals.—Section 49L.)

of the tenure or holding has been illegally enhanced or is substantially in excess of the rent payable by tenants of the same class for lands of the same description with similar advantages in the vicinity, pass an order altering the amount of the rent of the tenure or holding to an amount which he considers to be fair.

(5) Notwithstanding anything contained in this Act, where a portion of a tenure or holding is sold or settled under sub-section (2),—

- (a) the Collector shall, before confirming the sale or making the settlement, distribute the rent of the tenure or holding over such portion and the remaining portion or portions of the tenure or holding and in making such distribution the Collector shall follow, as far as may be, the procedure laid down in section 88; and
 - (b) the division of the said tenure or holding consequent upon such sale or settlement and the distribution of the rent of such tenure or holding made under clause (a) shall, subject to the provisions of section 49M, be binding on the tenants and the landlord concerned.
- (6) Nothing in this section shall affect,—
- (a) any right to execute a decree for the sale of any such tenure or holding or the terms or conditions of any *bona fide* contract relating thereto if such decree was passed or such contract was registered—
 - (i) in the case of Santhals of the districts of Birbhum, Bankura and Midnapore, before the 1st November, 1916, and
 - (ii) in the case of other castes and tribes to which this Chapter has been applied, at least one year before the date of the publication of the notification under sub-section (2) of section 49A in respect of such castes or tribes, or
 - (b) any right for the sale of any such tenure or holding for the recovery of any dues which are recoverable as public demands.

Stay of
execution
of decrees.

¹49L. If the sale of a tenure or holding, or any portion thereof, is ordered in execution of a decree against an aboriginal tenure-holder, *raiyat* or under-*raiyat* in respect of such tenancy or portion thereof, ²[other than a decree to recover an arrear of rent which has accrued in respect of such tenancy] the Court

¹See foot-note 4 on page 582, *ante*.

²The words within square brackets were inserted by section 2 of, and the First Schedule to, the West Bengal Laws (Amendment and Repeal) Act, 1947 (West Ben. Act XII of 1947). See also para. 2 of foot-note 2 on page 586, *ante*.

of 1885.]

(Chapter VIIA.—Restrictions on Alienation of Land by
Aboriginals.—Sections 49M—49-O.)

executing the decree shall allow the tenant reasonable time in which to pay the amount due.

¹49M. (1) An appeal, if presented within thirty days from the date of the order appealed against, shall lie to the Collector of the district from any order made under sections 49F, 49H, ²[49J or 49K] by any officer in the district exercising the powers of a Collector, and the order of the Collector on appeal shall be final: Appeal and revision.

Provided that every order passed by the Collector on appeal shall be subject to revision and modification by the Commissioner.

(2) Notwithstanding anything in sub-section (1), an appeal from any order made under any of the sections mentioned in that sub-section by an officer acting under Chapter X of this Act³ shall be to such officer as the ³[State Government] may appoint in this behalf, and the orders of such officers on appeal shall be final:

Provided that, in every such case, every order passed by the said officer on appeal shall be subject to revision and modification by such officer as the ³[State Government] may appoint to deal therewith.

(3) An appeal, as provided in sub-section (1), shall lie to the Commissioner from any original order made by the Collector of the district under any of the sections mentioned in that sub-section.

¹49N. Notwithstanding anything in this Act, no suit shall lie in any Civil Court to vary or set aside any order passed by the Collector in any proceeding under this Chapter except on the ground of fraud or want of jurisdiction. Bar to suits.

¹49-O. Nothing in this Chapter shall affect the validity of any transfer (not otherwise invalid) by a tenure-holder, *raiyat*, or under-*raiyat* of his tenure or holding, or any portion thereof, made *bona fide*,— Saving of certain transfers.

(a) in the case of the Santhals of the district of Birbhum, Bankura and Midnapore before the 1st November, 1916, and

(b) in the case of other castes and tribes to which this Chapter has been applied, at least one year before the date of the publication of the notification under section 49A, sub-section (2), in respect to such castes or tribes.

¹See foot-note 4 on page 582, *ante*.

²These figures, letters and word were substituted for the word, figures and letter "or 49J" by section 2 of, and the First Schedule to, the West Bengal Laws (Amendment and Repeal) Act, 1947 (West Ben. Act XII of 1947). See also para. 2 of foot-note 2 on page 586, *ante*.

³See foot-note 3 on page 544, *ante*.

(Chapter VIII.—General Provisions as to Rent.—Sections 50—52.)

CHAPTER VIII.

GENERAL PROVISIONS AS TO RENT.

Rules and presumptions as to amount of rent.

Rules and
presump-
tions as to
fixity of
rent.

50. (1) Where a tenure-holder or *raiyat* and his predecessors-in-interest have held at a rent or rate of rent which has not been changed from the time of the Permanent Settlement, the rent or rate of rent shall not be liable to be increased except on the ground of an alteration in the area of the tenure or holding.

(2) If it is proved in any suit or other proceeding under this Act that either a tenure-holder or *raiyat* and his predecessors-in-interest have held at a rent or rate of rent which has not been changed during the twenty years immediately before the institution of the suit or proceeding, it shall be presumed, until the contrary is shown, that they have held at that rent or rate of rent from the time of the Permanent Settlement:

Provided that if it is required by or under any enactment that in any local area tenancies, or any classes of tenancies, at fixed rents or rates of rent shall be registered as such on, or before, a date specified by or under the enactment, the foregoing presumption shall not after that date apply to any tenancy or, as the case may be, to any tenancy of that class in that local area unless the tenancy has been so registered.

(3) The operation of this section, so far as it relates to land held by a *raiyat*, shall not be affected by the fact of the land having been separated from other land which formed with it a single holding, or amalgamated with other land into one holding.

(4) Nothing in this section shall apply to tenure held for a term of years or determinable at the will of the landlord.

Presump-
tion as to
amount of
rent and
conditions
of holding.

51. If a question arises as to the amount of a tenant's rent or the conditions under which he holds in any agricultural year, he shall be presumed, until the contrary is shown, to hold at the same rent and under the same conditions as in the last preceding agricultural year.

Alteration of rent on alteration of area.

Alteration
of rent in
respect of
alteration
in area.

52. (1) Every tenant shall—

(a) be liable to pay additional rent for all land proved by measurement to be in excess of the area for which

¹As to the application of section 52 with retrospective effect to suits, see section 3 of the Bengal Tenancy (Second Amendment) Act, 1939 (Ben. Act XIII of 1939), as amended by sec. 6 of the Bengal Tenancy (Amendment) Act, 1940 (Ben. XVIII of 1940).

of 1885.]

(Chapter VIII.—General provisions as to Rent.—Section 52.)

rent has been previously paid by him, unless it is proved that the excess is due to the addition to the tenure or holding of land which having previously belonged to the tenure or holding was lost by diluvion or otherwise without any reduction of the rent being made:

[Provided that no Court shall decree any addition of rent under this clause unless it is satisfied that there has in fact been an increase in the actual area of the tenure or holding since the rent previously paid was settled]; and

(b) be entitled to a reduction of rent in respect of any deficiency proved by measurement to exist in the area of his tenure or holding as compared with the area for which rent has been previously paid by him, unless it is proved that the deficiency is due to the loss of land which was added to the area of the tenure or holding by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to the area.

²(1A) In determining in a suit under clause (a) of sub-section (1) whether there has been an increase in the actual area of the tenure or holding, the Court shall inquire as to whether the present areas of other tenures or holdings in the vicinity which were settled at or about the same time or on the same standard of measurement as the tenure or holding in suit, show increases in area compared with the area originally settled similar to that alleged in respect of the tenure or holding in suit: if such increases are found to exist, it shall be presumed (notwithstanding anything contained in any contract) that there has in fact been no increase in the actual area of the tenure or holding in suit since the rent previously paid was settled.

²(1B) When in a suit an increase in the actual area of the tenure or holding is sought to be proved under clause (a) of sub-section (1), the Court shall inquire as to whether the present area of the tenure or holding in suit is within the same defined boundaries as set forth in the *kabuliyat* or *patta* at the inception of the tenancy; and if the Court finds that the present area of the tenure or holding in suit is within such boundaries no increase of rent shall be granted on account of increase of area³[unless an equivalent reduction of rent on account of reduction of area has been granted in respect of one or more of the contiguous tenures or holdings]:

Provided that the provisions of this sub-section shall not apply to any suit in respect of any tenure or holding of which any

¹This proviso was inserted by section 2(1) of the Bengal Tenancy (Second Amendment) Act, 1939 (Ben. XIII of 1939).

²Sub-sections (1A) and (1B) were inserted by sec. 2(2), *ibid*.

³These words were added by sec. 4 of the Bengal Tenancy (Amendment) Act, 1940 (Ben. Act XVIII of 1940).

(Chapter VIII.—General provisions as to Rent.—Section 52.)

portion of the boundaries set forth in the *kabuliyat* or the *patta* comprises a river or sea or land held *khas* by the landlord or the [Government].

(2) In determining the area for which rent has been previously paid, the Court shall, if so required by any party to the suit, have regard to—

- (a) the origin and conditions of the tenancy, for instance, whether the rent was a consolidated rent for the entire tenure or holding;
- (b) whether the tenant has been allowed to hold additional land in consideration of an addition to his total rent or otherwise with the knowledge and consent of the landlord;
- (c) the length of time during which the tenancy has lasted without dispute as to rent or area; and
- (d) the length of the measure used or in local use at the time of the origin of the tenancy as compared with that used or in local use at the time of the institution of the suit.

(3) In determining the amount to be added to the rent, the Court shall have regard to the rates payable by tenants of the same class for lands of a similar description and with similar advantages in the vicinity, and, in the case of a tenure-holder, to the profits to which he is entitled in respect of the rent of his tenure, and shall not in any case fix any rent which under the circumstances of the case is unfair or inequitable.

(4) The amount abated from the rent shall bear the same proportion to the rent previously payable as the diminution of the total yearly value of the tenure or holding bears to the previous total yearly value thereof, or, in default of satisfactory proof of the yearly value of the land lost, shall bear to the rent previously payable the same proportion as the diminution of area bears to the previous area of the tenure or holding.

³(5) When in a suit under this section the landlord or tenant is unable to indicate any particular land as held in excess, the rent to be added on account of the excess area may be calculated at the average rate of rent paid on all the lands of the holding exclusive of such excess area.

³(6) When in a suit under this section the landlord or tenant proves that—

- (i) at or about the time when the area was recorded in any *patta* or *kabuliyat* there existed, in respect of the estate or permanent tenure or part thereof in which

¹See foot-note 1 on page 560, *ante*.

²Sub-section (5) was added to sec. 52 by sec. 6 of the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act III of 1898).

³This sub-section was substituted for the former sub-section (6) which was added for Western Bengal, by sec. 13 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907) and for Eastern Bengal, by sec. 13 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), by sec. 34 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Chapter VIII.—General provisions as to Rent.—Sections 53, 54.)

the tenure or holding is situated a practice of settlement being made after measurement of the land assessed with rent, or,

- (ii) the area entered in the counterfoil receipts corresponds with the area in the rent-roll on which the claim is based and that a practice of settlement on measurement prevailed at the time when the rent-roll was prepared,

it shall be presumed that the area of the tenure or holding was settled by measurement.

*Payment of rent.*¹

53. Subject to agreement or established usage, a money-rent payable by a tenant shall be paid in four equal instalments falling due on the last day of each quarter of the agricultural year.

Instalments of rent.

²54. (1) Every tenant shall pay or tender each instalment of rent before sunset of the day on which it falls due:

Time and place for payment of rent.

Provided that the tenant may pay or tender the rent payable for the year at any time during the year before it falls due.

(2) The payment or tender of rent may be made—

(i) at the landlord's village office, or at such other convenient place as may be appointed in that behalf by the landlord; or

(ii) by postal money-order in the manner prescribed

3* * * * *

A tender may also be made by depositing the rent in Court in accordance with the provisions of section 61.

(3) Where rent is sent by postal money-order in the manner prescribed, the Court may presume until the contrary is proved that a tender has been made.

(4) When a landlord accepts rent sent by postal money-order, the fact of this acceptance shall not be used in any way as evidence that he has admitted as correct any of the particulars set forth in the postal money-order form, ⁴* * * *

(5) Any instalment or part of an instalment of rent not duly paid at or before the time, when it falls due shall be deemed to be an arrear.

¹The word "rent" in secs. 53 to 55 includes also money recoverable under any enactment for the time being in force as if it was rent—see sec. 3(13), *ante*.

²This section 54 was substituted for the former section by sec. 35 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³The words "by rules made by the Provincial Government" were omitted by section 2 of, and the First Schedule to, the West Bengal Repealing and Amending Act, 1948 (West Ben. Act VII of 1948).

⁴The words, figures and letters "or that he has waived his rights under sections 26D, 26E, 26F or 26J" were omitted by sec. 18 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

[Act VIII]

(Chapter VIII.—General provisions as to Rent.—Sections 55—57.)

Appropriation of payments.

55. (1) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

(2) If he does not make any such declaration, the payment may be credited to the account of such year and the instalment as the landlord thinks fit.

¹Receipts and accounts.

Tenant making payment to his landlord entitled to a receipt.

56. (1) Every tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord a written receipt for the amount paid by him, signed by the landlord.

(2) The landlord shall prepare and retain a counterfoil of the receipt.

(3) The receipt and counterfoil shall specify such of the several particulars shown in "^{*} ^{*} ^{*} Schedule II to this Act as can be specified by the landlord at the time of payment:

Provided that the ³[State Government] may, from time to time, prescribe or sanction a modified form ⁴either generally or for any particular local area or class of cases.

(4) If a receipt does not contain substantially the particulars required by this section, it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

Tenant entitled to full discharge or statement of account at close of year.

57. (1) Where a landlord admits that all rent payable by a tenant to the end of the agricultural year has been paid, the tenant shall be entitled to receive from the landlord, free of charge, within three months after the end of the year, a receipt in full discharge of all rent falling due to the end of the year, signed by the landlord.

(2) Where the landlord does not so admit, the tenant shall be entitled, on paying a fee of four annas, to receive within three months after the end of the year a statement of account, specifying the several particulars shown in "⁵ ^{*} ^{*} Schedule II to this Act, or in such other form as may from time to time be prescribed by the ³[State Government] either generally or for any particular local area or class of cases.

¹The word "rent" in secs. 56 to 60 includes also money recoverable under any enactment for the time being in force as if it was rent—See sec. 3(13), *ante*.

²The words "the form of receipt given in" were omitted by sec. 36 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³See foot-note 3 on page 544, *ante*.

⁴for orders made under section 56(3), see the Bengal Statutory Rules and Orders, 1940, Vol. I.

⁵The words "the form of account given in" were omitted by sec. 37 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Chapter VIII.—General provisions as to Rent.—Section 58.)

(3) The landlord shall prepare and retain a copy of the statement containing similar particulars.

58. (1) If a landlord without reasonable cause refuses or neglects to deliver to a tenant a receipt containing the particulars ¹[required] by section 56 for any rent paid by the tenant, the tenant may, within three months from the date of payment, institute a suit to recover from him such penalty, not exceeding double the amount of value of that rent, as the Court thinks fit.

Penalties and fine for withholding receipts and statements of accounts and failing to keep counter-parts.

(2) If a landlord without reasonable cause refuses or neglects to deliver to a tenant demanding the same either the receipt in full discharge or, if the tenant is not entitled to such a receipt, the statement of account for any year ¹[required] in section 57, the tenant may, within the next ensuing agricultural year, institute a suit to recover from him such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by the tenant to the landlord during the year for which the receipt or account should have been delivered.

²(3) If a landlord or his agent, without reasonable cause fails to deliver to the tenant a receipt or statement, or to prepare and retain a counterfoil or copy of a receipt or statement, as required by either of the said sections, such landlord or agent, as the case may be, shall be liable to a fine not exceeding fifty rupees, to be imposed, after summary inquiry, by the Collector.

²(4) The Collector may hold a summary inquiry under sub-section (3) either on information received from a Revenue Officer within one year, or upon complaint of the party aggrieved made within three months, from the date of failure, or upon the report of a Civil Court.

²(5) Where, in any case instituted under sub-section (3), the Collector discharges any landlord or agent, and is satisfied that the complaint of the tenant on which the proceedings were instituted is false or vexatious, the Collector may, in his discretion, by his order of discharge, direct the tenant to pay to such landlord, or agent such compensation, not exceeding fifty rupees, as the Collector thinks fit.

¹The word "required" was substituted for the word "prescribed" by sec. 127 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²Sub-sections (3) to (8) were substituted for the original sub-section (3), for Western Bengal, by sec. 14 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by sec. 14 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908). The original sub-section ran thus—

"(3) If a landlord without reasonable cause fails to prepare and retain a counterfoil or copy of a receipt or a statement as required by either of the said sections, he shall be punished with fine which may extend to fifty rupees."

[Act VIII]

(Chapter VIII.—General provisions as to Rent.—Section 59.)

¹(6) An appeal shall lie to the Commissioner of the Division against any order of the Collector imposing a fine under sub-section (3), or awarding compensation under sub-section (5); and the order² passed by the Commissioner on such appeal shall, subject to any order which may be passed on revision by the Board of Revenue³, be final.

¹(7) Any fine imposed or compensation awarded under this section may be recovered in the manner provided by any law⁴ for the time being in force for the recovery of a public demand.

¹(8) For the purpose of an inquiry under this section, the Collector shall have power to summon, and enforce the attendance of, witnesses, and compel the production of documents in the same manner as is provided in the case of a Court under [the Code of Civil Procedure, 1908].

Act V of
1908.

¹(9) The existence of a dispute as to the rent or area of a tenancy on account of which rent is paid shall not be deemed to be a reasonable cause for refusing, neglecting or otherwise failing to deliver—

(a) a receipt for any amount actually paid on account of rent, or

(b) the statement of account required by section 57,

and the refusal of the tenant to accept the receipt shall not be deemed to be a reasonable cause for failing to prepare and retain a counterfoil of such receipt, as required by section 56.

State
Govern-
ment to
prepare
forms
of receipt
and
account.

59. (1) The ¹[State Government] shall cause to be prepared and kept for sale to landlords at all subdivisional offices forms of receipts with counterfoils and of statements of account suitable for use under ²[sections 56 to 58].

(2) The forms may be sold in books with the leaves consecutively numbered or otherwise as the ³[State Government] thinks fit.

¹See foot-note 2 on page 595, *ante*.

²In Bengal Act I of 1907, sec. 14, this word is printed as "orders."

³Now the Board of Revenue for [West Bengal]—see the Bengal, Bihar and Orissa and Assam Laws Act, 1912 (VII of 1912), sec. 3, and Sch. D, item 3.

⁴See the Bengal Public Demands Recovery Act, 1913 (Ben. Act III of 1913), sec. 3, and Sch. I.

⁵The words and figures "the Code of Civil Procedure, 1908," were substituted for the words "the Code of Civil Procedure" by sec. 128 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁶This sub-section was added by sec. 38, *ibid*.

⁷See foot-note 3 on page 544, *ante*.

⁸The words and figures "sections 56 to 58" were substituted for the words "the foregoing sections" by sec. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Chapter VIII.—General provisions as to Rent.—Sections 60, 61.)

Ben. Act
VII of
1876.

60. Where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876, as proprietor, manager or mortgagee of that estate, or of his agent authorised in that behalf, shall be a sufficient discharge for the rent; and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person.

Effect of receipt by registered proprietor, manager or mortgagee.

But nothing in this section shall affect any remedy which any such third person may have against the registered proprietor, manager or mortgagee.

*Deposit of rent.*¹

61. (1) In any of the following cases, namely:—

Applica-
tion to
deposit
rent in
Court.

- (a) when a tenant tenders money on account of rent and the landlord refuses to receive it or refuses to grant a receipt for it;
- (b) when a tenant bound to pay money on account of rent has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it;
- (c) when the rent is payable to co-shares jointly, and the tenant is unable to obtain the joint receipt of the co-sharers for the money, and no person has been empowered to receive the rent on their behalf; or
- (d) when the tenant entertains a *bona fide* doubt as to who is entitled to receive the rent,

the tenant may present to the Court having jurisdiction to entertain a suit for the rent of his tenure or holding an application in writing for permission to deposit in the Court "a sum not less than the amount of the money then due].

(2) The application shall contain a statement of the grounds on which it is made; shall state—

in cases (a) and (b), the name of the person to whose credit the deposit is to be entered, "and the name of his common agent, if any.]

¹The word "rent" in secs. 61 to 64 includes also money recoverable under any enactment for the time being in force as if it was rent—see sec. 3(13), *ante*.

²These words were substituted for the words "the full amount of the money then due" by sec. 39(a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³The words "and the name of his common agent, if any" were inserted by sec. 39(b)(i), *ibid*.

[Act VIII]

(Chapter VIII.—General provisions as to Rent.—Sections 62, 63.)

in case (c), the names of the sharers to whom the rent is due, or of so many of them as the tenant may be able to specify, and

in case (d), the names of the person to whom the rent was last paid and of the person or persons now claiming it;

shall be signed and verified, in the manner ¹[provided in] ²[sub-rules (2) and (3) of rule 15 of Order VI in Schedule I to the Code of Civil Procedure, 1908] by the tenant, or, where he is not personally cognisant of the facts of the case, by some person so cognisant; ³and shall in cases (a) and (b) be accompanied by the prescribed cost of transmission of the money deposited to the landlord and in cases (c) and (d) by a fee of the prescribed amount.]

Act V of 1908.

Receipt
granted
by Court
for rent
deposited
to be a
valid
acquit-
tance.

62. (1) If it appears to the Court to which an application is made under ⁴[section 61] that the applicant is entitled under that section to deposit the rent, it shall receive the rent and give a receipt for it under the seal of the Court.

(2) A receipt given under this section shall operate as an acquittance for the amount of the rent payable by the tenant and deposited as aforesaid, in the same manner and to the same extent as if that amount of rent had been received—

in case (a) and (b) ⁴[section 61], by the person specified in the application as the person to whose credit the deposit was to be entered;

in case (c) of that section, by the co-sharers to whom the rent is due; and

in case (d) of that section, by the person entitled to the rent.

Procedure
for
payment
to the
landlord
of rent
deposited.

63. The Court receiving a deposit—

(i) in case (a) or (b) of section 61 shall forthwith forward the same by postal money-order to the address of the landlord, or of the common agent, if any, of the landlord empowered to receive rent;

¹The words "provided in" were substituted for the words "prescribed in" by sec. 127 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words, brackets and figures were substituted for the words and figures "section 52 of the Code of Civil Procedure" by sec. 128, *ibid.*

³These words, brackets and letters were substituted for the words "and shall be accompanied by a fee of such amount as the Local Government from time to time by rule directs" by sec. 39(b)(ii), *ibid.*

⁴The word and figures "section 61" were substituted for the words "the last foregoing section" by section 126, *ibid.*

⁵This section 63 was substituted for the former section by sec. 40, *ibid.*

of 1885.]

(Chapter VIII.—General provisions as to Rent.—Section 64.)

- (ii) in case (c) or (d) of that section shall forthwith cause to be affixed in a conspicuous place at the Court-house a notification of the receipt thereof containing a statement of all material particulars, and, if the amount of the deposit is not paid away under section 64 within the period of fifteen days next following the date on which the notification is so affixed, the Court shall forthwith in case (c) cause a notice of the receipt of the deposit to be posted free of charge at the landlord's village-office, if any, and in some conspicuous place in the village in which the tenure or holding or any portion thereof is situated, and in case (d) cause a like notice to be served free of charge on every person who it has reason to believe claims, or is entitled to, the deposit.

64. (1) The Court may pay the amount of the deposit ¹[notified under section 63] to any person appearing to it to be entitled to the same, or may, if it thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled. Payment of refund of deposit.

²[* * * * *]

³(2) If no payment is made ⁴[under clause (i) of section 63 or under sub-section (1) of this section] before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor upon his application and on his returning the receipt given by the Court with which the rent was deposited.

⁵(3) No suit or other proceeding shall be instituted against ⁶[the Government], or against any officer of ⁷[the Government], in respect of anything done by a Court receiving a deposit under ⁸[section 62]; but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section.

¹The words and figures " notified under section 63 " were inserted by sec. 41(a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²Original sub-section (2) was omitted by sec. 41(b), *ibid*.

³Sub-sections (3) and (4) were re-numbered as sub-sections (2) and (3) by sec. 41(c), *ibid*.

⁴These words, brackets, letter and figures were substituted for the words " under this section " by sec. 41(d), *ibid*.

⁵The words " the Crown " were originally substituted for the words " the Secretary of State for India in Council " by paragraph 3 of, and Schedule I, to the Government of India (Adaptation of Indian Laws) Order, 1937 and thereafter the word " Government " was substituted for the word " Crown " by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁶The words " the Crown " were originally substituted for the words " the Government " by paragraph 3 of, and Schedule I, to the Government of India (Adaptation of Indian Laws) Order, 1937 and thereafter the word " Government " was substituted for the word " Crown " by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁷The word and figures " section 62 " were substituted for the words " the foregoing sections " by sec. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

[Act VIII]

(Chapter VIII.—General provisions as to Rent.—Sections 64A—66.)

¹*Penalty for refusing to receive rent.*

Penalty for refusing to receive rent tendered by postal money-order or deposited.

¹64A. If a landlord or his agent refuses without reasonable cause to receive payment of rent remitted by postal money-order or deposited in Court, the landlord shall be precluded from recovering by suit interest, costs or damages in respect of the same, and the Court may in addition award to the tenant damages not exceeding twenty-five *per cent.* on the whole amount claimed by the plaintiff.

The plea of the existence of any dispute as to the amount of rent or area of land of the tenure or holding shall not be deemed to be a reasonable cause under this section:

Provided that, when a landlord accepts rent, which has been deposited or remitted by postal money-order, the fact of his acceptance shall not be used in any way as evidence that he has admitted as correct any of the particulars set forth in the application for permission to deposit or in the postal money-order form.

*Arrears of rent.*²

Liability to sale for arrears in case of permanent tenure, holding at fixed rates or occupancy-holding.

65. Where a tenant is a permanent tenure-holder, a *raiyat* holding at fixed rates or an occupancy-*raiyat*, he shall not be liable to ejectment for arrears of rent, but his tenure or holding shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon.

Ejectment for arrears in other cases.

66. (1) When an arrear of rent remains due from a tenant not being a permanent tenure-holder, a *raiyat* holding at fixed rates or an occupancy-*raiyat*, at the end of the [¹agricultural year]

* * * * *

the landlord may, whether he has obtained a decree for the recovery of the arrear or not, and whether he is entitled by the terms of any contract to eject the tenant for arrears or not, institute a suit to eject the tenant.

¹This heading and section 64A were inserted by sec. 42 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²The word "rent" in secs. 65 to 68 includes also money recoverable under any enactment for the time being in force as if it was rent—see sec. 3(13), *ante*.

³The words "agricultural year" within square brackets were substituted for the words "Bengal year" by sec. 43(a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁴The words "where that year prevails, or at the end of the month of Jeth where the Fasli or Amli year prevails" were omitted, *ibid*.

of 1885.]

(Chapter VIII.—General provisions as to Rent.—Sections 67, 68.)

(2) In a suit for ejectment for an arrear of rent a decree passed in favour of the plaintiff shall specify the amount of the arrear and of the interest (if any) due thereon, and the decree shall not be executed if that amount and the costs of the suit are paid into Court within ¹[thirty days] from the date of the decree, or, when the Court is closed on the ¹[thirtieth] day, on the day upon which the Court re-opens.

(3) The Court may for special reasons extend the period of ¹[thirty days] mentioned in this section.

67. An arrear of rent shall bear simple interest at the rate of ²[six and a quarter] *per centum per annum* from the expiration of that quarter of the agricultural year in which the instalment falls due ³[to the date of payment or of the institution of the suit, whichever date is earlier].

Interest on arrears.

68. (1) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, the Court may award to the plaintiff in addition to the amount decreed for rent and costs, such damages not exceeding ⁴[twelve and a half] *per centum* on the amount of rent decreed, as it thinks fit:

Power to award damages on rent withheld without reasonable cause, or to defendant improperly sued for rent.

Provided that interest shall not be decreed when damages are awarded under this section:

⁵Provided also that where damages are awarded—

(i) the amount of such damages shall not be less than the interest accruing up to the date of the institution of the suit, and

(ii) interest on the arrear may be awarded from the date of the institution of the suit up to the date of payment at such rate as the Court directs.

(2) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the plaintiff has instituted the suit without reasonable or probable cause, the court may award to

¹The words "thirty days" and "thirtieth" were substituted for the words "fifteen days" and "fifteenth", respectively, by sec. 43(b) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²After the word "twelve" in sec. 67 the words "and a half" were inserted, for Western Bengal, by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), sec. 15(a), and, for Eastern Bengal, by the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908), sec. 15(a), and thereafter these words within square brackets were substituted for the words "twelve and a half" by sec. 19 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

³The words "to the date of payment or of the institution of the suit whichever date is earlier" within square brackets in section 67, were substituted for the words "to the institution of the suit," for Western Bengal, by sec. 5(b) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by sec. 15(b) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

⁴The words "twelve and a half" were substituted for the word "twenty-five" by section 2 of the Bengal Tenancy (Amendment) Act, 1939 (Ben. Act II of 1939).

⁵This proviso was inserted by sec. 44 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

[Act VIII.]

(Chapter VIII.—General provisions as to Rent.—Sections 69—73.)

the defendant, by way of damages, such sum, not exceeding '[twelve and a half] *per centum* on the whole amount claimed by the plaintiff, as it thinks fit.

69. (*Order for appraising or dividing produce.*)—*Repealed* by s. 45 of the Bengal Tenancy (Amendment) Act, 1928 (*Ben. Act IV of 1928*).

70. (*Procedure where officers appointed.*)—*Repealed* by s. 45 of the Bengal Tenancy (Amendment) Act, 1928 (*Ben. Act IV of 1928*).

71. (*Rights and liabilities as to possessions of crop.*)—*Repealed* by s. 45 of the Bengal Tenancy (Amendment) Act, 1928 (*Ben. Act IV of 1928*).

Liability for ³rent on change of landlord or after transfer of tenure or holding.

Tenant not liable to transferee of landlord's interest or rent paid to former landlord, without notice of the transfer.

72. (1) A tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer and was paid to the landlord whose interest was so transferred, unless the transferee has before the payment given notice of the transfer to the tenant.

(2) Where there is more than one tenant paying rent to the landlord whose interest is transferred, a general notice from the transferee to the tenants published in the prescribed manner shall be a sufficient notice for the purposes of this section.

Liability for rent before transfer of occupancy-holding

73. When an occupancy-*raiyat* transfers his holding in whole or in part the transferor and transferee shall be jointly and severally liable to the landlord or arrears of rent due before the transfer:

Provided that the transferor shall not be liable to the landlord for such arrears of rent if the transferee has agreed to pay such arrears to the landlord and the fact has been mentioned in the instrument of transfer.

¹See foot-note 4 on page 601, *ante*.

²The heading over sec. 69 was repealed by sec. 45 of the Bengal Tenancy (Amendment) Act, 1928 (*Ben. Act IV of 1928*).

³The word "rent" in secs. 72 to 75 includes also money recoverable under any enactment for the time being in force as if it was rent—*see* 3(13), *ante*.

⁴This section was substituted for the former section by sec. 46 of the Bengal Tenancy (Amendment) Act, 1928 (*Ben. Act IV of 1928*).

of 1885.]

(Chapter VIII.—General provisions as to Rent.—Sections 74, 74A.)

Illegal cesses, etc.

74. ¹(1) All impositions upon tenants under the denomination of *abwab*, *mahtat*, or other like appellations, in addition to the actual rent, shall be illegal, and all stipulations and reservations for the payment of such shall be void. *Abwab. etc., illegal.*

¹(2) All impositions upon tenants of road cess or public works cess, or of both,—

Ben. Act
X of

(a) in excess of the net amount ²[fixed] by clause (2) of section 41 of the Cess Act, 1880, or

(b) on any scale in excess of that ³[required] by clause (3) of that section,

levied in addition to the actual rent, shall be illegal, and all stipulations and reservations for payment of any such excess contained in any contract made between a landlord and a tenant on or after the 13th day of October, 1880, shall be void:

Provided that nothing in this sub-section shall affect the terms of a written contract registered before the commencement of the Bengal Tenancy (Amendment) Act, 1919:

Ben. Act
I of
1919.

Provided also that, subject to the provisions of section 72 of the Indian Contract Act, 1872, no suit shall lie for the recovery of anything paid before the commencement of the Bengal Tenancy (Amendment) Act, 1919, on account of the impositions referred to in sub-section (2).

X of
1872.

¹(3) Nothing in this section shall be deemed to affect the terms of a permanent *mukarrari* lease granted by a proprietor or holder of a permanent tenure in a permanently-settled area ⁴[and registered before the commencement of the Bengal Tenancy (Amendment) Act, 1928].

Ben. Act
of
1928.

line for
realisation
abwab,

⁵74A. (1) If a landlord or his agent realises from a tenant any imposition declared under sub-section (1) of section 74 to be illegal, such landlord or agent, as the case may be, shall be liable to the same fine, to be imposed in the same manner, as in sub-section (3) of section 58, and the provisions of sub-sections (4),

⁵Section 74 was re-numbered as sub-section (1) of section 74 and sub-sections (2) and (3) were added to the section as so re-numbered by sec. 2 of the Bengal Tenancy (Amendment) Act, 1919 (Ben. Act III of 1919).

²The word "fixed" within square brackets was substituted for the word "prescribed" by sec. 127 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³The word "required" was substituted for the word "prescribed" by sec. 127, *ibid*.

⁴These words, brackets and figures in sec. 74(3) were added by sec. 47, *ibid*.

⁵This section 74A was inserted by sec. 20 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

[Act VIII]

(Chapter VIII.—General provisions as to Rent.—Sections 75, 75A.)

(7) and (8) of the said section relating to inquiry, fine and procedure shall, *mutatis mutandis* and so far as may be, apply to proceedings under this section.

(2) An appeal shall lie to the District Judge against an order imposing a fine under this section, and the order passed by the District Judge on such appeal shall be final.

(3) The imposition of a fine on a landlord or landlord's agent under this section shall not operate as a bar to the institution of a suit under section 75.

Penalty
for
exaction
by land-
lord from
tenant of
sum in
excess of
the rent
payable.

75. Every tenant from whom, except under any special enactment for the time being in force, any sum of money or any portion of the produce of his land is exacted by his landlord in excess of the rent ¹[or road cess or public works cess] ²[or interest] lawfully payable, may, ³[subject to the second proviso to sub-section (2) of section 74] within six months from the date of the exaction, institute a suit to recover from the landlord, in addition to the amount or value of what is so exacted, such sum by way of penalty as the Court thinks fit, not exceeding two hundred rupees; or, when double the amount or value of what is so exacted exceeds two hundred rupees, not exceeding double that amount or value.

'Suspension of provisions relating to enhancement of rent.

Suspension
of
provisions
relating to
enhance-
ment of
rent.

'75A. (1) All the provisions of this Act relating to enhancement of rent are hereby suspended for a period of ten years with effect from the twenty-seventh day of August, 1937 ³[and all such provisions relating to enhancement of rent of a *raiyat* or an under-*raiyat* are hereby suspended for a further ⁶(period of ten years) with effect from the twenty-seventh day of August, 1947.]

¹The words "or road cess or public works cess" in sec. 5 were inserted by sec. 3(1) of the Bengal Tenancy (Amendment) Act, 1919 (Ben. Act III of 1919).

²The words "or interest" within square brackets in sec. 75 were inserted for Western Bengal, by sec. 17 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907) and, for Eastern Bengal, by sec. 17 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

³These words, brackets and figures within square brackets in sec. 75 were inserted by sec. 3(2) of the Bengal Tenancy (Amendment) Act, 1919 (Ben. Act III of 1919).

⁴This section 75A and its heading were inserted by sec. 21 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

⁵These words and figures were added by sec. 7(1) of the Bengal Tenancy (Amendment) Act, 1947 (Ben. Act V of 1947).

⁶These words within chain brackets were substituted for the words "period of five years" by sec. 2 of the Bengal Tenancy (Amendment) Act, 1953 (West Ben. Act II of 1953).

[of 1885.]

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Section 76.)

Ben. Act
VI of
1938.

(2) (a) All decrees and orders enhancing rent passed under any of the provisions of this Act on or after the twenty-seventh day of August, 1937 and before the date of the commencement of the Bengal Tenancy (Amendment) Act, 1938, are hereby declared to be inoperative from the date of such decree or order until the expiry of the ten years referred to in sub-section (1) [and all decrees and orders enhancing the rent of a *raiyat* or an under-*raiyat* so passed are hereby declared to be inoperative for a further ²(period of ten years) from the twenty-seventh day of August, 1947].

(b) Any provision providing for enhancement of rent contained in any contract entered into between a landlord and a tenant during the period of ten years referred to in sub-section (1) is hereby declared to be inoperative during the said period [and any provision providing for enhancement of rent of a *raiyat* or an under-*raiyat* contained in any such contract or in any contract entered into between a landlord and a *raiyat* or an under-*raiyat* during the ²(period of ten years) with effect from the twenty-seventh day of August, 1947, is hereby declared to be inoperative during the said ²(period of ten years)].

(3) Notwithstanding anything contained in this Act or any other law, the period during which a decree, order or contract is rendered inoperative under this section shall not be taken into account in computing any period under the law of limitation nor in construing the terms of a contract.

CHAPTER IX.

MISCELLANEOUS PROVISIONS AS TO LANDLORDS AND TENANTS.

Improvements.

76. (1) For the purposes of this Act, the term "improvement," used with reference to a * * * holding, shall mean any work which adds to the value of the holding, which is suitable to the holding and consistent with the purpose for which it was let, and which, if not executed on the holding, is either executed directly for its benefit, or is, after execution, made directly beneficial to it.

Definition
of "im-
prove-
ment."

¹These words and figures were added by clauses (a) and (b) respectively of sub-section (2) of sec. 7 of the Bengal Tenancy (Amendment) Act, 1947 (Ben. Act V of 1947).

²See foot-note 6 on page 605, *ante*.

³The word "*raiyat's*" was omitted by sec. 48 (a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

[Act VIII]

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Section 77.)

(2) Until the contrary is shown, the following shall be presumed to be improvements within the meaning of this section:—

(a) the construction of wells, tanks, water-channels and other works for the storage, supply or distribution of water for the purposes of agricultural, '[or for drinking] or for the use of men and cattle employed in agriculture;

²*Explanation.*—Such construction on agricultural lands shall not be deemed to impair the value of the land or to render it unfit for the purposes of the tenancy;

(b) the preparation of land for irrigation;

(c) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, of land used for agricultural purposes, or waste-land which is culturable;

(d) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes;

(e) the renewal or reconstruction of any of the foregoing works, or alterations therein, or additions thereto; and

³(f) the erection of a dwelling-house whether of masonry, bricks, stone or any other material whatsoever, for the tenant and his family together with all necessary out-offices.

— (3) But no work executed by the '[tenant] of a holding shall be deemed to be an improvement for the purposes of this Act if it substantially diminishes the value of his landlord's property.

77(1) * * * * Neither the '[tenant] nor his landlord shall, as such, be entitled to prevent the other from making an improvement in respect of the holding, except on the ground that he is willing to make it himself.

(2) If both the '[tenant] and his landlord wish to make the same improvement, the '[tenant] shall have the prior right to make it, unless it affects another holding or other holdings under the same landlord.

Right to make improvements in case of holding at fixed rates and occupancy-holding.

¹The words "or for drinking" were inserted by sec 48(b) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²This "Explanation" was added by sec. 48 (c), *ibid*.

³This clause (f) was substituted for the former clause by sec. 48 (d), *ibid*.

⁴The word "tenant" was substituted for the word "*raiyat*" by sec. 48(e), *ibid*.

⁵The words "where a *raiyat* holds at fixed rates or has an occupancy right in his holding" were omitted by sec. 49(a), *ibid*.

⁶The word "tenant" was substituted for the word "*raiyat*" by sec. 49(b), *ibid*.

of 1885.]

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Sections 78—81.)

1(3) Any fee realised from a tenant for permission to make any improvement in respect of his holding shall be deemed to be an *abwab* and the provisions of sub-section (1) of section 74 shall apply thereto.

78. If a question arises between the “[*raiyat* or under-*raiyat*]” and his landlord—

(a) as to the right to make an improvement, or

(b) as to whether a particular work is an improvement,

the Collector may, on the application of either party, decide the question, and his decision shall be final.

Collector to decide question as to right to make improvement, etc.

79. (Right to make improvements in case of non-occupancy holding.)—Repealed by s. 51 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

80. (1) A landlord may, by application to such Revenue-officer as the “[State Government]” may appoint, register any improvement which he has lawfully made or which has been lawfully made “[wholly or partly]” at his expense or which he has assisted a tenant in making.

Registration of landlord's improvements.

(2) The application shall be in such form, shall contain such information, and shall be verified in such manner, by local inquiry or otherwise, as the “[State Government]” from time to time “[prescribes].”

(3) The officer receiving the application may reject it if it has not been made within twelve months—

(a) in the case of improvements made before the commencement of this Act—from the commencement of this Act;

(b) in the case of improvements made after the commencement of this Act—from the date of the completion of the work.

81. (1) If any landlord or tenant of a holding desires that evidence relating to any improvement made in respect thereof be recorded, he may apply to a Revenue-officer, who shall thereupon, at a time and place of which notice shall be given to the parties, record the evidence, unless he considers that there are

Application to record evidence as to improvement.

¹This sub-section was inserted by sec. 49(c) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²In ss. 78, 82, 83 and 87 the words “*raiyat* or under-*raiyat*” were substituted for the word “*raiyat*” by sec. 50, *ibid*.

³See foot-note 3 on page 544, *ante*.

⁴The words “wholly or partly” were inserted by sec. 52(a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁵The word “prescribes” was substituted for the words “by rule directs” by sec. 52(b), *ibid*.

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Sections 82, 83.)

no reasonable grounds for making the application, or it is made to appear that the subject-matter thereof is under inquiry in a Civil Court.

(2) When any matter has been recorded under this section, the record thereof shall be admissible in evidence in every subsequent proceedings between the landlord and tenant or any persons claiming under them.

Compensation for raiyats' or under-raiyats' improvements.

82. (1) Every ¹[raiayat or under-raiyat] who is ejected from his holding shall be entitled to compensation for improvements which have been made in respect thereof in accordance with this Act by him, or by his predecessor in interest, and for which compensation has not already been paid.

(2) Whenever a Court makes a decree or order for the ejection of a ¹[raiayat or under-raiyat], it shall determine the amount of compensation (if any) due under this section to the ¹[raiayat or under-raiyat] for improvements, and shall make the decree or order of ejection conditional on the payment of that amount to the ¹[raiayat or under-raiyat].

(3) No compensation under this section for an improvement shall be claimable where the ¹[raiayat or under-raiyat] has made the improvement in pursuance of a contract or under a lease binding him, in consideration of some substantial advantage to be obtained by him, to make the improvement without compensation, and he has obtained that advantage.

(4) Improvements made by a ¹[raiayat or under-raiyat] between the second day of March, 1883, and the commencement of this Act shall be deemed to have been made in accordance with this Act.

(5) The ²[State Government] may, from time to time, by notification in the *Official Gazette*, make rules requiring the Court to associate with itself, for the purpose of estimating the compensation to be awarded under this section for an improvement, such number of assessors as the ²[State Government] thinks fit, and determining the qualifications of those assessors and the mode of selecting them.

Principle on which compensation is to be estimated.

83. (1) In estimating the compensation to be awarded under ³[section 82] for an improvement, regard shall be had—

(a) to the amount by which the value, or the produce, of the holding, or the value of that produce, is increased by the improvement;

¹See foot-note 2 on page 607, *ante*.

²See foot-note 3 on page 544, *ante*.

³The word and figures "section 82" in sec. 83(1) were substituted for the words "the last foregoing section" by sec. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Sections 84, 85.)

- (b) to the condition of the improvement, and the probable duration of its effects;
- (c) to the labour and capital required for the making of such an improvement;
- (d) to any reduction or remission of rent or any other advantage given by the landlord to the '[raiyat or under-raiyat]' in consideration of the improvement; and
- (e) in the case of a reclamation or of the conversion of unirrigated into irrigated land, to the length of time during which the '[raiyat or under-raiyat]' has had the benefit of the improvement at an unenhanced rent.

(2) When the amount of the compensation has been assessed, the Court may, if the landlord and '[raiyat or under-raiyat]' agree direct that, instead of being paid wholly in money, it shall be made wholly or partly in some other way.

Acquisition of land for building and other purposes.

84. A Civil Court may, on the application of the landlord of a holding, and on being satisfied that he is desirous of acquiring the holding or part thereof for some reasonable and sufficient purpose having relation to the good of the holding or of the estate in which it is comprised, including the use of the ground as building ground, or for any religious, educational or charitable purpose,

Acquisition of land for building and other purposes.

and on being satisfied on the certificate of the Collector that the purpose is reasonable and sufficient,

authorise the acquisition thereof by the landlord upon such conditions as the Court may think fit, and require the tenant to sell his interest in the whole or such part of the holding to the landlord upon such terms as may be approved by the Court, including full compensation to the tenant.

2[* *]

85. (*Restrictions on sub-letting.*)—Repealed by s. 53 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

¹See foot-note 2 on page 607, *ante*.

²The heading to sec. 85 was repealed by sec. 53 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Sections 85A, 86.)

Surrender and abandonment.

Surrender
by tenure-
holders.

¹85A. (1) A tenure-holder may apply to the Court for permission to surrender a tenure.

(2) An application under sub-section (1) shall be in the prescribed form, shall give particulars, *inter alia*, of under-tenure-holders and *raiyats*, if any, holding directly under the tenure sought to be surrendered, and of any incumbrances upon the said tenure, and, shall be accompanied by the process-fee prescribed for service of notices upon the landlord or his common agent, if any, under-tenure-holders and *raiyats*, if any, referred to above and incumbrancers, if any.

(3) If the Court, after hearing the parties, grants permission for the surrender of the tenure, it shall impose such equitable conditions as it may think proper.

(4) An appeal shall lie to the ordinary Civil Appellate Court from any order of a Court under this section.

Surrender.

86. (1) A *raiyat* ²[or under-*raiyat*] not bound by lease or other agreement for a fixed period may, at the end of any agricultural year, surrender his holding.

(2) But, notwithstanding the surrender, the *raiyat* ²[or under-*raiyat*] shall be liable to indemnify the landlord against any loss of the rent of the holding for the agricultural year next following the date of the surrender, unless he gives to his landlord, at least three months before he surrenders, notice of his intention to surrender.

(3) When a *raiyat* ²[or under-*raiyat*] has surrendered his holding, the Court shall in the following cases for the purposes of sub-section (2) presume, until the contrary is shown, that such notice was so given, namely:—

(a) if the *raiyat* ²[or under-*raiyat*] takes a new holding in the same village from the same landlord during the agricultural year next following the surrender;

(b) If the *raiyat* ²[or under-*raiyat*] ceases, at least three months before the end of the agricultural year at the end of which the surrender is made, to reside in the village in which the surrendered holding is situate.

¹This section 85A was inserted by sec. 22 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

²The words "or under-*raiyat*" in sec. 86 were inserted by sec. 23, *ibid.*

of 1885.]

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Section 86A.)

(4) The *raiyat* ¹[or under-*raiyat*] may, if he thinks fit, cause the notice to be served through the Civil Court within the jurisdiction of which the holding or any portion of it is situate.

(5) When a *raiyat* ¹[or under-*raiyat*] has surrendered his holding, the landlord may enter on the holding and either let it to another tenant or take it into cultivation himself.

(6) When a holding is subject to an incumbrance secured by a registered instrument, ²[or when there is an under-*raiyat* on the holding or part thereof] the surrender of the holding shall not be valid unless it is made with the consent of the landlord and the incumbrancer ²[or the under-*raiyat*, as the case may be].

(7) Save as provided in ³[sub-section (6)], nothing in this section shall affect any arrangement by which a *raiyat* ¹[or under-*raiyat*] and his landlord may arrange for a surrender of the whole or a part of the holding.

'86A. (1) If the lands of a tenure or holding or a portion of such lands are lost by diluvion, the rent of the tenure or holding shall be abated by an amount which bears the same proportion to the rent of the whole tenancy, as the area lost bears to that of the whole tenancy.

Abatement of rent on account of diluvion and re-entry into lands which re-appear.

(2) (a) Notwithstanding anything contained in this Act or any other law or any contract to the contrary, the right, title and interest of the tenant or his successors-in-interest shall subsist in such lands or portion thereof during the period of loss by diluvion not exceeding twenty years and the tenant or his successors-in-interest shall have right to immediate possession on the reappearance of such lands or portion thereof within twenty years of the loss by the diluvion, and the landlord shall have right to the arrears of rent without interest or damage in respect of the land which has reappeared for the period during which it was lost or for four years whichever is less.

(b) The rent of the lands which have reappeared, shall for the purposes of the payment both of the arrears of rent under this sub-section and of the rent due thereafter (until such rent is modified in accordance with the provisions of this Act) be calculated on the rent of the remainder of the tenancy existing when

¹See foot-note 2 on page 610, *ante*.

²These words were inserted by sec. 54 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³The word, brackets and figure "sub-section (6)" were substituted for the words "the last foregoing sub-section" by sec. 126, *ibid*.

⁴This section 86A was substituted for the original section 86A by sec. 24 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

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(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Section 87.)

possession of the lost lands is resumed, and shall bear the proportion to that rent which the area of the lands which have reappeared bears to that of the remainder of the tenancy:

Provided that in cases where the entire tenure or holding has been lost by diluvion, the rent of the portion thereof which reappear shall be calculated in like manner on the rent existing when the entire tenancy was lost.

(3) Nothing shall prevent the accrual of rights under the operation of any other enactment in any portion of the lands of a tenure or holding which have been lost by diluvion, if such lands thereafter reappear as an accretion thereto.

Abandonment.

87. (1) If a ¹[*raiyat* or under-*raiyat*] voluntarily abandons his residence without notice to his landlord and without arranging for payment of his rent as it falls due, and ceases to cultivate his holding either by himself or by some other person, the landlord may, at any time after the expiration of the agricultural year in which the ¹[*raiyat* or under-*raiyat*] so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take it into cultivation himself.

(2) Before a landlord enters under this section, he shall file a notice in the prescribed form in the Collector's office, stating that he has treated the holding as abandoned and is about to enter on it accordingly; and the Collector shall cause a notice to be published in ²[the prescribed manner].

(3) When a landlord enters under this section, the ¹[*raiyat* or under-*raiyat*] shall be entitled to institute a suit for recovery of possession of the land at any time not later than the expiration of two years, or, in the case of a non-occupancy-*raiyat*, six months, from the date of the publication of the notice; and thereupon the Court may, on being satisfied that the ¹[*raiyat* or under-*raiyat*] did not voluntarily abandon his holding, order recovery of possession on such terms, if any, with respect to compensation to persons injured and payment of arrears of rent as to the Court may seem just.

(4) Where the whole or part of a holding has been sublet by a registered instrument, the landlord shall, before entering under this section on the holding, offer the whole holding to the sub-lessee for the remainder of the term of the sub-lease at the rent paid by the ¹[*raiyat* or under-*raiyat*] who has ceased to cultivate the holding, and on condition of the sub-lessee paying up all arrears due from that ¹[*raiyat* or under-*raiyat*]. If the sub-lessee

¹See foot-note 2 on page 607, *ante*.

²The words "the prescribed manner" were substituted for the words "such manner as the Government, by rule, directs" by sec. 56(a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Section 88.)

refuses or neglects within ¹[two months] to accept the offer, the landlord may avoid the sub-lease and may enter on the holding and let it to another tenant or cultivate it himself as provided in sub-sections (1) and (2).

²(5) If an under-*raiyat* has—

- (a) a right of occupancy in a holding or portion thereof, or
- (b) been admitted in a document by the landlord to have a permanent and heritable right in his land, or
- (c) been in possession of his land for a continuous period of twelve years whether before or after or partly before and partly after the commencement of the Bengal Tenancy (Amendment) Act, 1928, or has a homestead thereon,

Ben. Act
IV of 1928.

the landlord shall, before entering on the holding, under this section, offer the whole holding, or part thereof, to the under-*raiyat* at the rent paid by him to the *raiyat* and on condition of the under-*raiyat* paying up all arrears due from that *raiyat* and a *salami* of five times the aforesaid rent. If the under-*raiyat* refuses or neglects within two months to accept the offer, the landlord may avoid the sub-tenancy and may enter on the holding and let it to another tenant, or cultivate it himself, as provided in sub-sections (1) and (2).

Subdivision of tenancy.

Division of
tenancy
not valid
unless con-
sented to
by all
parties
or ordered
by Civil
Court.

³88. (1) Save as provided elsewhere in this section, a division of a tenure or holding or a distribution of the rent payable in respect thereof shall not be valid unless such division or distribution has been expressly consented to in writing by both—

- (a) the landlord or the entire body of landlords or their agents duly authorised in that behalf, and
- (b) all the co-sharer tenants:

Provided that, if there is proved to have been made in any landlord's rent-roll any entry showing that any tenure or holding has been divided or that the rent payable in respect thereof has been distributed, such landlord may be presumed to have given his express consent in writing to such division or distribution.

¹The words "two months" were substituted for the words "a reasonable time" by sec. 56(b) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²This sub-section was added by sec. 56(c), *ibid*.

³This section was substituted for the former section by sec. 25 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

Section 88 is not affected by sec. 1 of the Bengal Tenancy (Validation and Amendment) Act, 1903 (Ben. Act I of 1903), *see* sec. 3 of that Act.

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Section 88.)

(2) The Civil Court, on application made to it by one or more co-sharer tenants for a division of a tenure or holding or for a distribution of the rent payable in respect thereof, or for the annulment or modification of a previous division or distribution other than one made under this sub-section or under an agreement made between all the landlords and co-sharer tenants in conformance with the provisions of sub-section (1), may, by order in writing, direct such division of the tenure or holding or such distribution of rent as the Court considers fair and equitable, or annul or modify a division or distribution previously made other than one of the nature referred to above if the Court considers it unfair and inequitable:

Provided that—

- (a) no such order shall be passed without notice to the landlord or the entire body of landlords or their common agent, if any, and to the remaining co-sharer tenants, the prescribed process-fee for which shall accompany the application;
- (b) no order for division or distribution shall be made which would result in bringing the rent for any portion below two rupees in the case of tenures or one rupee in the case of holdings; and
- (c) nothing contained in this sub-section shall be deemed to authorise a Court on an application for division or distribution to direct a division or distribution in respect of the share of any tenant other than an applicant under this sub-section or a co-sharer tenant who has been joined as a co-applicant under sub-section (3).

(3) On receipt of notice of an application for division or distribution under sub-section (2) a co-sharer tenant may apply to be joined as a co-applicant, and upon such application the Court shall join the said co-sharer tenant as a co-applicant without further notice to the landlord or landlords and the remaining co-sharer tenants.

(4) Every order of a Court under sub-section (2) directing division of a tenure or holding or a distribution of the rent thereof shall also direct payment to the landlord of one rupee as mutation fee by each applicant or each body of applicants including co-applicants, if any, joined under sub-section (3).

(5) Every order referred to in sub-section (4) shall state the date from which the division or distribution shall have effect and the joint and several liability of each co-sharer tenant for arrear of rent, if any, up to that date, shall subsist in all the lands of the entire tenure or holding.

(6) An appeal shall lie to the ordinary Civil Appellate Court from an order of a Court under this section, provided that it is presented within thirty days from the date of such order and is accompanied by the prescribed fee.

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(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Sections 89—92.)

Ejectment.

89. No tenant shall be ejected from his tenure or holding except in execution of a decree. No ejectment except in execution of decree.

Measurements.

90. (1) Subject to the provisions of this section and any contract, a landlord may, by himself, or by any person authorised by him in this behalf, enter on and measure all land comprised in his estate or tenure, other than land exempt from the payment of revenue. Landlord's right to measure land.

(2) A landlord shall not, without the consent of the tenant, or the written permission of the Collector, be entitled to measure land more than once in ten years, except in the following cases (namely):—

- (a) where the area of the tenure or holding is liable, by reason of alluvion or diluvion, to vary from year to year, and the rent payable depends on the area;
- (b) where the area under cultivation is liable to vary from year to year and the rent payable depends on the area under cultivation;
- (c) where the landlord is a purchaser otherwise than by voluntary transfer and not more than two years have elapsed since the date of his entry under the purchase.

(3) The ten years shall be computed from the date of the last measurement, whether made before or after the commencement of this Act.

91. (1) Where a landlord desires to measure any land which he is entitled to measure under [section 90], the Civil Court may, on the application of the landlord, make an order requiring the tenant to attend and point out the boundaries of the land. Power for Court to order tenant to attend and point out boundaries.

(2) If the tenant refuses or neglects to comply with the order, a map or other record of the boundaries and measurements of the land, prepared under the direction of the landlord at the time when the tenant was directed to attend, shall be presumed to be correct until the contrary is shown.

92. (1) Every measurement of land made by order of a Civil Court, or of a Revenue-officer, in any suit or proceeding between a landlord and tenant, shall be made by the acre, unless the Court or Revenue-officer directs that it be made by any other specified standard. Standard of measurement.

¹The word and figures "section 90" within square brackets in sec. 91(1) were substituted for the words "the foregoing section" by sec. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

[Act VIII]

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Section 93.)

(2) If the rights of the parties are regulated by any local measure other than the acre, the acre shall be converted into the local measure for the purposes of the suit or proceeding.

(3) The '[State Government] may, after local inquiry, make rules declaring for any local area the standard or standards of measurement locally in use in that area, and every declaration so made shall be presumed to be correct until the contrary is shown.

Managers.

Power to call upon co-owners to show cause why they should not appoint a common manager.

²93. (i) When any dispute exists between co-owners of an estate or tenure or of lands held jointly between two or more estates or tenures as to the management thereof; or

(ii) when, owing to the existence of a large number of small co-sharers in an estate or tenure, the tenants or landlords are put to inconvenience and harassment in the payment or receipt of the rent due,

the District Judge may, if it appears to him to be just and convenient, on the application of—

in case (i),—

(a) the Collector, or

(b) any one having an interest in the estate or tenure or in any of the estates or tenures; and

in case (ii),—

(a) more than half the tenants, or

(b) co-sharers holding more than half the aggregate interests in the estate or tenure,

direct notice to be served on all the co-owners or co-sharers calling on them to show cause why they should not appoint a common manager—

in case (i), either for the whole of the estate or tenure or estates or tenures, as the case may be, or for those portions of the estate or tenure or estates or tenures, as the case may be, which are affected by the dispute, and

in case (ii), for the estate or tenure in which the tenants or landlords are put to inconvenience or harassment:

Provided that a co-owner or co-sharer of an estate or tenure or a co-owner of lands held jointly between two or more estates

¹See foot-note 3 on page 544, *ante*.

²This section was substituted for the former section by sec. 58 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Sections 94—97.)

or tenures shall not be entitled to apply under this section unless he is actually in possession of the interest he claims, and, if he is a co-owner or co-sharer of an estate, unless his name and the extent of his interest are registered under the Land Registration Act, 1876.

Ben. Act
VII of
1876.

94. If the co-owners fail to show cause as aforesaid within one month after service of a notice under [section 93], the District Judge may make an order directing them to appoint a common manager, and a copy of the order shall be served on any co-owner who did not appear before it was made.

Power to
order
them to
appoint
a manager
if cause
is not
shown.

95. If the co-owners do not, within such period, not being less than one month after the making of an order under [section 94], as the District Judge may fix in this behalf, or, where the order has been served as directed by that section, within a like period after such service, appoint a common manager and report the appointment for the information of the District Judge, the District Judge may, unless it is shown to his satisfaction that there is a prospect of a satisfactory arrangement being made within a reasonable time,—

Power to
appoint
manager
if order
is not
obeyed.

(a) direct that the estate or tenure be managed by the Court of Wards in any case in which the Court of Wards consents to undertake the management thereof; or

(b) in any case appoint a manager.

96. The [State Government] may nominate a person for any local area to manage all estates and tenures within that local area for which it may be necessary to appoint a manager under clause (b) of [section 95]; and, when any person has been so nominated, no other person shall be appointed manager under that clause by the District Judge, unless in the case of any estate the Judge thinks fit to appoint one of the co-owners themselves as manager.

Power to
nominate
person to
act in all
cases under
clause
(b) of section 95.

97. In any case in which the Court of Wards undertakes under section 95 the management of an estate or tenure, so much of the provisions of the Court of Wards Act, 1879, as relates to the management of immovable property shall apply to the management.

The Court
of Wards
Act, 1879,
applicable
to manage-
ment by
Court of
Wards.

Ben. Act
X of
1879.

¹The word and figures "section 93" in sec. 94 were substituted for the words "the last foregoing section" by sec. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²The word and figures "section 94" within square brackets in sec. 95 were substituted for the words "the last foregoing section", *ibid*.

³See foot-note 3 on page 544, *ante*.

⁴The word and figures "section 95" in sec. 96 were substituted for the words "the last foregoing section" by sec. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Sections 98—99A.)

Provisions applicable to manager.

98. (1) A manager appointed under section 95 may, if the District Judge thinks fit, be remunerated by a fixed salary or percentage of the money collected by him as manager, or partly in one way and partly in the other, as the District Judge from time to time directs.

(2) He shall give such security for the proper discharge of his duties as the District Judge directs.

(3) He shall, subject to the control of the District Judge, have, for the purposes of management, the same powers as the co-owners jointly might but for his appointment have exercised, and the co-owners shall not exercise any such power.

(4) He shall deal with and distribute the profits in accordance with the orders of the District Judge.

(5) He shall keep regular accounts, and allow the co-owners or any of them to inspect and take copies of those accounts.

(6) He shall pass his accounts at such period and in such form as the District Judge may direct.

(7) He may make any application which the proprietors could make under section 103¹ * * *

(8) He shall be removable by the order of the District Judge, and not otherwise.

Power to restore management to co-owners.

99. When an estate or tenure has been placed under the management of the Court of Wards, or a manager has been appointed for the same under section 95, the District Judge may at any time direct that the management of it be restored to the co-owners if he is satisfied that the management will be conducted by them without inconvenience to the public or injury to private rights.

Appointment of common agent.

²99A. (1) Where two or more persons are joint or co-sharer landlords they may by an instrument in writing appoint a common agent for the whole of their joint property or for any portion thereof to receive on behalf of all of them—

(a) notices of transfer under sections 12, 13, 15, 17, 18³[and 26C] of tenures or holdings or portions or shares thereof held under them within that property,
** * * *

(c) the rent deposited in Court under section 61, ⁵[and]

¹The words, figures, and letter "or section 158A" in sec. 98(7) which were inserted by sec. 59 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928) were omitted by sec. 26 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

²Section 99A was inserted by sec. 60 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³The figures, letters and word "26F and 48H" were originally substituted for the word, figures and letter "and 26F" in sec. 99A(1) (a) by sec. 8 of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930) and thereafter the word, figures and letter within square brackets were substituted for the word, figures and letters "26C, 26F and 48H" by sec. 27(1) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

⁴Clause (b) of sub-section (1) of section 99A was omitted by section 8 of the Bengal Tenancy (Amendment) Act, 1947 (Ben. Act V of 1947).

⁵The word "and" at the end of sec. 99A(1)(c) was inserted by sec. 27(3) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

of 1885.]

(Chapter IX.—Miscellaneous provisions as to landlords and tenants.—Chapter X.—Record-of-rights and settlement of rents.—Part I.—Record-of-rights.—Sections 100, 101.)

¹(d) the notices referred to in sub-section (2) of section 85A and in sub-section (2) of section 88.

(2) (a) The Collector shall, on application by the common agent and on production by him of the instrument of appointment, register the names of the common agent and the landlords appointing him and their addresses and other particulars in the prescribed manner.

(b) The name and address of such common agent shall be entered upon the receipt required under section 56 to be given on the payment of rent for the tenure or holding situated within the area for which he has been appointed under sub-section (1).

²100. (1) The High Court may, from time to time, make rules defining the powers and duties of managers under sections 95 to 99. Power to make rules.

(2) The Board of Revenue may, from time to time, make rules defining the powers and duties of common agents under section 99A.

CHAPTER X.

RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS.

Part I.—Record-of-rights.

101. (1) The [State Government] may, in any case ^{5*} * Power to order survey and preparation of record-of-rights.
if it thinks fit, ^{6*} * * * *
make an order directing that a survey be made and a record-of-rights be prepared, by a Revenue-officer, in respect of ⁷[all lands] in any local area, estate or tenure or part thereof:

⁸Provided that the provisions of sections 104 to 105A, inclusive, 109C, 109D, 110, 112, and 113 shall not apply in respect of any lands which are held by a non-agriculturist and are not used for purposes connected with agriculture or horticulture.

¹Clause (d) of sec. 99A (1) was inserted by sec. 27(4) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

²This section was substituted for the former section by sec. 61 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³This Chapter was substituted for the original Chapter X by sec. 7 of the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act III of 1898).

As regards proceedings under secs. 104, 105 and 106 of the Bengal Tenancy Act, 1885 (VIII of 1885), as originally passed, see the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act III of 1898), secs. 8 and 9.

Every Deputy Collector making a partition under the Estates Partition Act, 1897 (Ben. Act V of 1897), has, as regards the estate under partition, all the powers exercisable by a Revenue-officer employed in preparing a record-of-rights under Chapter X of the present Act, see sec. 44 of the former Act.

⁴See foot-note 3 on page, 544, ante.

⁵The words "with the previous sanction of the Governor-General in Council, and may" in section 101 were repealed by sec. 2 of, and the First Schedule to, the Devolution Act, 1920 (Act XXXVIII of 1920), and are omitted.

⁶The words "without such sanction in any of the cases next hereinafter mentioned" in section 101 were repealed, *ibid.*, and are omitted.

⁷The words "all lands" within square brackets were substituted for the words "the lands" by sec. 62(i) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁸This proviso was inserted by sec. 62(ii), *ibid.*

(Chapter X.—Record-of-rights and settlement of rents.—Part I.—Record-of-rights.—Section 101.)

(2) ¹[In particular and without prejudice to the generality of the foregoing power, the ²State Government may make such an order in the following cases,] namely:—

“(a) where—

- (i) the landlord or tenants, or
 - (ii) a proportion of not less than one-half of the total number of landlords, or
 - (iii) a landlord, or a proportion of the landlords, whose interest, or the aggregate of whose interests, respectively, in the lands of the local area, estate or tenure or part thereof is not less than one-half of the total shares of all the landlords therein, or
 - (iv) a proportion of not less than one-fourth of the total number of tenants,
- applies, or apply, for such an order, depositing, or giving security for, such amount for the payment of expenses as the ²[State Government] directs;
- (b) where the preparation of such a record is calculated to settle or avert a serious dispute existing or likely to arise between the tenants and their landlords generally;
 - (c) where the local area, estate or tenure or the part thereof belongs to, or is managed ⁴[by, or on behalf of, the Government, or is managed by] the Court of Wards ⁵[or a Manager appointed by the District Judge under section 95];
 - (d) where a settlement of land-revenue is being or is about to be made in respect of the local area, estate or tenure or of the part thereof.

¹These words in sec. 101(2) were substituted for the words “The cases in which an order may be made under this section without the previous sanction of the Governor General in Council are the following”, by sec. 2 of, and the First Schedule to, the Devolution Act, 1920 (XXXVIII of 1920).

²See foot-note 3 on page 544, *ante*.

³This clause (a) was substituted for the original clause (a) for Western Bengal, by sec. 19(1) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and for Eastern Bengal, by sec. 18(1) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908). The original clause ran thus:—

“Where the landlords or the tenants, or a large proportion of the landlords or of the tenants apply for such an order and deposit, or give security for, such amount, for the payment of expenses, as the Local Government directs.”

⁴The words “by, or on behalf of, the Crown, or is managed by” in sec. 101(2)(e) were originally substituted for the words “by, the Government or” by paragraph 3 of, and Schedule I to, the Government of India (Adaptation of Indian Laws) Order, 1937 and thereafter the word “Government” was substituted for the word “Crown” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁵The words and figures “or a manager appointed by the District Judge under section 95” in sec. 101(2)(e), were added for Western Bengal, by sec. 19(2) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and for Eastern Bengal, by sec. 18(2) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

of 1885.]

(Chapter X.—Record-of-rights and settlement of rents.—
Part I.—Record-of-rights.—Section 102.)

Explanation 1.—The term “settlement of land revenue”, as used in clause (d), includes a settlement of rents in an estate or tenure which belongs to the Government.

Explanation 2.—A superior landlord may apply for an order under this section notwithstanding that his estate or part thereof is temporarily leased to a tenure-holder.

(3) A notification in the *Official Gazette* of an order under this section shall be conclusive evidence that the order has been duly made.

(4) The survey shall be made and the record-of-rights prepared in accordance with rules made in this behalf by the [State Government].

102. Where an order is made under section 101, the particulars to be recorded shall be specified in the order, and may include, either without or in addition to other particulars, some or all of the following, namely:—

Particulars to be recorded.

(a) the name of each tenant or occupant;

(b) the class [or classes] to which each tenant belongs, that is to say, whether he is a tenure-holder, *raiyat* holding at fixed rates, settled *raiyat*, occupancy-*raiyat*, non-occupancy-*raiyat* or under-*raiyat*, [with or without a right of occupancy] and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure;

(c) the situation and quantity and one or more of the boundaries of the land held by each tenant or occupier;

(d) the name of each tenant's landlord;

¹(dd) the name of each proprietor in the local area or estate;

(e) the rent payable at the time the record-of-rights is being prepared;

¹See foot-note 3 on page 544, *ante*.

²The words “or classes” in sec. 102(b) were inserted by sec. 63(i) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³The words “with or without a right of occupancy” were inserted, *ibid*.

⁴Clause (dd) was inserted for Western Bengal, by sec. 20(1) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and for Eastern Bengal, by sec. 19(1) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

(Chapter X.—Record-of-rights and settlement of rents.—
Part I.—Record-of-rights.—Section 102.)

- ¹(*ee*) the amount payable in respect of any rights of pasturage, forest rights, rights over fisheries and the like at the time the record-of-rights is being prepared, the conditions and incidents appertaining to such rights, and if the amount is a gradually increasing amount, the time at which, and the increments by which, it increases;
- (*f*) the mode in which that rent has been fixed—whether by contract, by order of a Court, or otherwise;
- (*g*) if the rent is a gradually increasing rent, the time at which, and the steps by which, it increases;
- ²(*gg*) the rights and obligations of each tenant and landlord in respect of—
- (*i*) the use by tenants of water for agricultural purposes, whether obtained from a river, *jhil*, tank or well or any other sources of supply, and
- (*ii*) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant, whether or not such appliances be situated within the boundaries of such land;
- (*h*) the special conditions and incidents, if any, of the tenancy;
- ³(*i*) any right of way or other easement attaching to the land for which a record-of-rights is being prepared;
- ⁴(*j*) if the land is claimed to be held rent free—whether or not rent is actually paid, and, if not paid, whether or not the occupant is entitled to hold the land without payment of rent, and, if so entitled, under what authority:
- ⁵Provided that, if lands are not used for purposes connected with agriculture or horticulture, it shall be sufficient to record that fact, together with the prescribed particulars relating to the occupant, the landlord and the tenancy.

¹Clause (*ee*) was inserted by sec. 63(*ii*) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²Clause (*gg*) was inserted, for Western Bengal, by sec. 20(2) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by sec. 19(2) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), and is to be deemed to have been so inserted from the commencement of the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act III of 1898).

³Clause (*i*) was inserted, for Western Bengal, by sec. 20(3) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by sec. 19(3) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

⁴This clause was formerly lettered (*i*) and was re-lettered (*j*), for Western Bengal, by sec. 20(3) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by sec. 19(3) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

⁵This proviso was inserted by sec. 63(*iii*) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Chapter X.—Record-of-rights and settlement of rents.—
Part I.—Record-of-rights.—Sections 102A—103A.)

102A. The ¹[State Government] may, for the purpose of settling or averting disputes existing or likely to arise between landlords, tenants, proprietors, or persons belonging to any of these classes regarding the use or passage of water,

Power to order survey and preparation of record-of-rights as to water.

make an order directing that a survey be made, and a record-of-rights be prepared, by a Revenue-officer, in order to ascertain and record the rights and obligations of each tenant and landlord in any local area, estate or tenure or part thereof, in respect of—

- (a) the use by tenants of water for agricultural purposes, whether obtained from a river, *jhil*, tank or well or any other sources of supply; and
- (b) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant, whether or not such appliances be situated within the boundaries of such land.

103. On the application of one or more of the proprietors or tenure-holders, or of a large proportion of the *raiyats*, of an estate or tenure, and on the applicant or applicants depositing or giving security for the required amount for expenses, a Revenue-officer may, subject to and in accordance with rules made in this behalf by the ²[State Government], ascertain and record all or any of the particulars specified in section 102 with respect to the estate or tenure or any part thereof.

Power for Revenue officer to record particulars on application of proprietor, tenure-holder or large proportion of *raiyats*.

103A. (1) When a draft record-of-rights has been prepared, the Revenue-officer shall publish the draft in the prescribed manner and for the prescribed period, and shall receive and consider any objections which may be made to any entry therein, or to any omission therefrom, during the period of publication.

Preliminary publication, amendment and final publication of record-of-rights.

(2) When such objections have been considered and disposed of according to such rules as the ³[State Government] may ⁴[make], and (if a settlement of land-revenue is being or is about to be made) the Settlement Rent-roll has been incorporated with the record under section 104F, sub-section (3), the Revenue-officer shall finally frame the record, and shall cause it to be finally published in the prescribed manner: and the publication shall be conclusive evidence that the record has been duly made under this Chapter.

(3) Separate draft or final records may be published under sub-section (1) or sub-section (2) for different local areas, estates, tenure, or parts thereof.

¹Section 102A was inserted, for Western Bengal, by sec. 21 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by sec. 20 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

²See foot-note 3 on page 544. *ante*.

³The word "make" in sec. 103A(2) was substituted for the word "prescribe" by sec. 127 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

[Act VIII]

(Chapter X.—Record-of-rights and settlement of rents.—
Part I.—Record-of-rights.—Part II.—Settlement of rents,
preparation of Settlement Rent-roll and disposal of objec-
tions in cases where a settlement of land-revenue is being
or is about to be made.—Sections 103B, 104.)

Certificate
of, and
presump-
tion as
to, final
publica-
tion, and
presump-
tion as to
correct-
ness, of
record-of-
rights.

¹103B. (1) When a record-of-rights has been finally published under section 103A, the Revenue-officer shall, within such time as the Board of Revenue may, by general or special order, ²[require], make a certificate stating the fact of such final publication and the date thereof, and shall date and subscribe the same with his name and official title.

(2) The certificate of final publication, or in the absence of such certificate, a certificate signed by the Collector of any district in which the local area, estate, tenure or part thereof to which the record-of-rights relates is wholly or partly situate, stating that a record-of-rights has been finally published on a specified date, shall be conclusive proof of such publication and of the date thereof.

(3) The ³[State Government] may, by notification, declare, with regard to any specified area, that a record-of-rights has been finally published for every village included in such area; and such notification shall be conclusive proof of such publication.

(4) In any suit or other proceeding in which a record-of-rights prepared and published under this Chapter, or a duly certified copy thereof or extract therefrom, is produced, such record-of-rights shall be presumed to have been finally published, unless such publication is expressly denied.

(5) Every entry in a record-of-rights finally published shall be evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved by evidence to be incorrect.

Part II.—Settlement of rents, preparation of Settlement Rent-roll and ⁴[disposal of objections] in cases where a settlement of land-revenue is being or is about to be made.

Settle-
ment of
rents and
prepara-
tion of
Settlement
Rent-roll
when to
be under-
taken by
Revenue-
officer.

104. In every case in which a settlement of land revenue is being or is about to be made, the Revenue-officer shall, after publication of the draft of the record-of-rights under section 103A, sub-section (1),—

(a) settle fair and equitable rents for tenants of every class,

¹This section which was inserted by sec. 21 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, was substituted for section 103B as inserted by sec. 22 of the Bengal Tenancy (Amendment) Act, 1907, by sec. 64 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²The word "require" was substituted for the word "prescribe" by sec. 127, *ibid*.

³See foot-note 3 on page 544, *ante*.

⁴The words "*disposal of objections*", in this heading were substituted for the words "*decision of disputes*," for Western Bengal, by sec. 23 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and for Eastern Bengal, by sec. 22 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

of 1885.]

(Chapter X.—Record-of-rights and settlement of rents.—Part II.
—Settlement of rents, preparation of Settlement Rent-roll,
and disposal of objections, in cases where a settlement of
land-revenue is being or is about to be made.—Section
104A.)

(b) notwithstanding anything contained in '[section 191],
settle a fair and equitable rent for any land in respect
of which he has recorded, in pursuance of 'clause (j)
of section 102, that the occupant is not entitled to
hold it without payment of rent, and

(c) prepare a Settlement Rent-roll:

"Provided that the Revenue Officer shall not settle the rents
of tenants of every class in an estate or tenure belonging to the
Government, if it does not appear to the '[State Government]
to be expedient that he should do so".

104A. (1) For the purposes of settling rents under this Part and preparing a Settlement Rent-roll, the Revenue-officer may proceed in any one or more of the following ways, or partly in one of those ways and partly in another, that is to say,—

Procedure
for settle-
ment of
rents and
prepara-
tion of
Settlement
Rent-roll
under
this Part.

(a) if in any case the landlord and tenant agree between
themselves as to the amount of the rent fairly and
equitably payable, the Revenue-officer shall satisfy
himself that the rent so agreed upon is fair and equi-
table, and if he is so satisfied, but not otherwise, it
may be settled and recorded as the fair and equitable
rent;

(b) the Revenue-officer may himself propose what he
deems to be the fair and equitable rent, and if the
amount so proposed is accepted, either orally or in
writing by the tenant, and if the landlord, after notice
to attend, raises no objection, the rent so proposed
may be settled and recorded as the fair and equitable
rent;

(c) if the circumstances are, in the opinion of the Revenue-
officer, such as to make it practicable to prepare a
Table of Rates showing for any local area, estate,
tenure or village or part thereof, or for each class of
land in any local area, estate, tenure or village or

¹The word and figures "section 191" in sec. 104(b) were substituted for the word and figures "section 192" by sec. 9 of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

²This reference "clause (j)" was substituted for the reference "clause (i)" for Western Bengal, by sec. 24(1) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by sec. 23(1) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

³This proviso was added to section 104, for Western Bengal, by sec. 24(2) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by sec. 23(2) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

⁴See foot-note 3 on page 544, ante.

⁵For an order made under the proviso to sec. 104, see the Bengal Statutory Rules and Orders, 1940, Vol. I, page 449.

(Chapter X.—Record of rights and settlement of rents.—Part II.
—Settlement of rents, preparation of Settlement Rent-roll,
and disposal of objections, in cases where a settlement of
land-revenue is being or is about to be made.—Section
104B.)

part thereof, the rate or rates of rent fairly and equitably payable by tenure-holders and *rai-yats* and under-*rai-yats* of each class, he may frame a Table of Rates and settle and record all or any of the rents on the basis of such rates in the manner hereinafter described;

- (d) the Revenue-officer may settle all or any of the rents by maintaining the existing rentals recorded in the record-of-rights as published under section 103A, sub-section (1), or by enhancing or reducing such rentals:

Provided that in making any such settlement regard shall be had to the principles laid down in sections 6 to 9 (both inclusive), 27 to 36 (both inclusive), 38, 39, 43, 50 to 52 (both inclusive), 180 and 191.

(2) The Settlement Rent-roll shall show the name of each landlord and of each tenant whose rent has been settled, and the amount of each such tenant's rent payable for the area shown against his name.

Contents
of Table
of Rates.

104B. (1) If a Table of Rates is prepared, it shall specify—

- (a) the class or several classes of land for which, having regard to the nature of the soil, situation, means of irrigation, and other like considerations, it is in the opinion of the Revenue-officer necessary or practicable to fix a rate or different rates of rent; and
- (b) the rate or rates of rent fairly and equitably payable by tenants holding land of each such class whose rent is liable to alteration.

Local
publica-
tion of
Table.

(2) When the Revenue-officer has prepared the Table of Rates he shall publish it in the local area, estate, tenure or village to which it relates, in the vernacular language prevailing in the district, and in the prescribed manner.

Revenue-
officer to
deal with
objections.

(3) Any person objecting to any entry in the Table of Rates may present a petition to the Revenue-officer within a period of one month after such publication, and the Revenue-officer shall consider any such objection and may alter or amend the Table.

Table
to be
submitted
to superior
Revenue
authority.

(4) If no objection is made within the said period of one month, or, where objections are made, after they have been disposed of, the Revenue-officer shall submit his proceedings to the Revenue authority empowered by rule made by the [State Government] to confirm the Tables and Rent-rolls prepared under this Part (hereinafter called the "confirming authority"), with a full statement of the grounds of his proposals, and shall forward any petitions of objection which he may have received.

¹See foot-note 3 on page 544, ante.

of 1885.]

(Chapter X.—Record-of-rights and settlement of rents.—Part II.
—Settlement of rents, preparation of Settlement Rent-roll,
and disposal of objections, in cases where a settlement of
land-revenue is being or is about to be made.—Sections
104C—104E.)

(5) The confirming authority may confirm a Table submitted under sub-section (4), or may disallow the same, or may amend the same in any manner which appears to it proper, and may allow in whole or in part any objection forwarded therewith or subsequently made, or may return the case for further inquiry.

Proceed-
ings of
confirming
authority.

(6) When a table of rates has been confirmed by the confirming authority, the order confirming it shall be conclusive evidence that the proceedings for the preparation of the Table have been duly conducted in accordance with this Act; and it may be presumed that the rates shown in the Table for tenants of each class, for each class of land, are the fair and equitable rates payable for land of that class within the area to which the Table applies.

Effect of
Table.

104C. When a table of rates has been confirmed under section 104B, sub-section (5), the Revenue-officer may settle all or any of the rents and prepare the Settlement Rent-roll on the basis of the rates shown in the Table, by calculating the rental of each tenure or each holding of a *raiya*t or under-*raiya*t on the area of such tenure or holding at the said rates:

Applica-
tion of
Table of
Rates.

Provided that the Revenue-officer shall not be bound to apply the said rates in any particular case in which he may consider it unfair or inequitable to do so.

104D. In framing a table of rates under section 104B, and in settling rents under section 104C, the Revenue-officer shall be guided by such rules as the [State Government] may make in this behalf, and shall, so far as may be, and subject to the proviso to the said section 104C, have regard to the general principles of this Act regulating the enhancement or reduction of rents.

Rules and
principles
to be
followed
in framing
Table of
Rates and
settling
rents in
accord-
ance
therewith.

104E. (1) When a Settlement Rent-roll for a local area, estate, tenure, or village or part thereof has been prepared, the Revenue-officer shall cause a draft of it to be published in the prescribed manner and for the prescribed period, and shall receive and consider any objections made to any entry therein, or omission therefrom, during the period of publication, and shall dispose of such objections according to such rules as the [State Government] may [make].

Preli-
minary
publica-
tion and
amend-
ment of
Settlement
Rent-roll.

(2) The Revenue-officer may, of his own motion or on the application of any party aggrieved, at any time before a Settlement Rent-roll is submitted to the confirming authority under section 104F, revise any rent entered therein:

Provided that no such entry shall be revised until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

¹See foot-note 3 on page 544, ante.

²The word "make" in sec. 104E (1) was substituted for the word "prescribe" by sec. 127 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

[Act VIII]

(Chapter X.—Record-of-rights and settlement of rents.—Part II.
—Settlement of rents, preparation of Settlement Rent-roll,
and disposal of objections, in cases where a settlement of
land-revenue is being or is about to be made.—Sections
104F—104H.)

Final
revision of
Settlement
Rent-roll,
and incor-
poration
of the
same in
the record-
of-rights.

104F. (1) When all objections have been disposed of under section 104E, the Revenue-officer shall submit the Settlement Rent-roll to the confirming authority, with a full statement of the grounds of his proposals and a summary of the objections (if any) which he has received.

(2) The confirming authority may sanction the Settlement Rent-roll, with or without amendment, or may return it for revision:

Provided that no entry shall be amended, or omission supplied, until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

(3) After sanction by the confirming authority, the Revenue-officer shall finally frame the Settlement Rent-roll and shall incorporate it with the record-of-rights published in draft under section 103A.

Appeal to,
and
revision
by,
superior
Revenue
authorities.

104G. (1) An appeal, if presented within two months from the date of the order appealed against, shall lie from every order passed by a Revenue-officer prior to the final publication of the record-of-rights on any objection made under section 104B, subsection (3), or section 104E; and such appeal shall lie to '[the prescribed superior Revenue authority].

(2) The Board of Revenue may, in any case under this Part, on application or of its own motion, direct the revision of any record-of-rights or any portion of a record-of-rights at any time within two years from the date of the certificate of final publication, but not so as to affect any order passed by a Civil Court under section 104H:

Provided that no such direction shall be made until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

Jurisdic-
tion of
Civil
Courts in
matters
relating
to rent.

104H. (1) Any person aggrieved by an entry of a rent settled in a Settlement Rent-roll prepared under sections 104A to 104F and incorporated in a record-of-rights finally published under section 103A, or by an omission to settle a rent for entry in such Settlement Rent-roll, may institute a suit in the Civil Court which would have jurisdiction to entertain a suit for the possession of the land to which the entry relates or in respect of which the omission was made.

(2) Such suit must be instituted within six months from the date of the certificate of final publication of the record-of-rights, or, if an appeal has been presented to a Revenue authority under section 104G, then within six months from the date of the disposal of such appeal.

¹The words "the prescribed superior Revenue authority" were substituted for the words "such superior Revenue authority as the Local Government may by rule prescribe" by sec. 65 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Chapter X.—Record-of-rights and settlement of rents.—Part II.
—Settlement of rents, preparation of Settlement Rent-roll,
and disposal of objections, in cases where a settlement of
land-revenue is being or is about to be made.—Section
104H.)

(3) Such suit may be instituted on any of the following grounds, and on no others, namely:—

- (a) that the land is not liable to the payment of rent;
- (b) that the land, although entered in the record-of-rights as being held rent-free, is liable to the payment of rent;
- (c) that the relation of landlord and tenant does not exist;
- (d) that land has been wrongly recorded as part of a particular estate or tenancy, or wrongly omitted from the lands of an estate or tenancy;
- (e) that the tenancy belongs to a class different from that to which he is shown in the record-of-rights as belonging;
- (f) that the Revenue-officer has not postponed the operation of the settled rent under the provisions of section 110, clause (a), or has wrongly fixed the date from which it is to take effect under that clause;
- ¹(g) that the special conditions and incidents of the tenancy have not been recorded, or have been wrongly recorded;
- ¹(h) that any right of way or other easement attaching to the land has not been recorded, or has been wrongly recorded.

²[No such suit shall be brought against the Government unless the Government] is landlord or tenant of the land to which the aforesaid entry relates or in respect of which the aforesaid omission was made.

(4) If it appears to the Court that the entry of rent settled is incorrect, it shall, in case (a) or case (c) mentioned in sub-section (3), declare that no rent is payable, and shall in any other case settle a fair rent;

and in any case referred to in clause (f) or clause (g) of the said sub-section (3) the Court may declare the date from which the rent settled is to take effect, or pass such order relating to the entry as it may think fit.

¹Clause (g) as originally enacted by the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act III of 1898) and clause (h) as inserted by section 24 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), were substituted for clause (g), as modified by section 25 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), by sec. 66 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²The words "No such suit shall be brought against the Crown unless the Crown" were originally substituted for the words "The Secretary of State for India in Council shall not be made a defendant in any such suit unless the Government" by paragraph 3 of, and Secretary of State for India in Council shall not be made a defendant Order, 1937 and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

[Act VIII]

(Chapter X.—*Record-of-rights and settlement of rents.*—Part II.—*Settlement of rents, preparation of Settlement Rent-roll, and disposal of objections, in cases where a settlement of land-revenue is being or is about to be made.*—Part III.—*Settlement of rents and decision of disputes in cases where a settlement of land-revenue is not being or is not about to be made.*—Sections 104J, 105.)

(5) When the Court has declared under sub-section (4) that no rent is payable, the entry to the contrary effect in the record-of-rights shall be deemed to be cancelled.

(6) In settling a fair rent under sub-section (4), the Court shall be guided by the rents of the other tenures or holdings of the same class comprised in the same Settlement Rent-roll, as settled under sections 104A to 104F.

(7) Any rent settled by the Court under sub-section (4) shall be deemed to have been duly settled in place of the rent entered in the Settlement Rent-roll.

(8) Save as provided in this section, no suit shall be brought in any Civil Court in respect of the settlement of any rent or the omission to settle any rent under sections 104A to 104F.

(9) When a Civil Court has passed final orders or a decree under this section, it shall notify the same to the Collector of the district.

Presump-
tions as
to rents
settled
under
sections
104A to
104G.

104J. Subject to the provisions of section 104H, all rents settled under sections 104A to 104F, and entered in a record-of-rights finally published under section 103A, or settled under section 104G, shall be deemed to have been correctly settled and to be fair and equitable rents within the meaning of this Act.

Part III.—Settlement of rents and decision of disputes in cases where a settlement of land-revenue is not being or is not about to be made.

Settle-
ment of
rents by
Revenue-
officer
in cases
where a
settlement
of land
revenue
is not
being or
is not
about to
be made

¹105. (1) When, in any case in which a settlement of land-revenue is not being made or is not about to be made, either the landlord or the tenant applies, within ²[four months] from the date of the certificates of the final publication of the record-of-rights under section 103A, sub-section (2), for a settlement of rent, the Revenue-officer shall settle a fair and equitable rent in respect of the land held by the tenant.

Explanation.—A superior landlord may apply for a settlement of rent notwithstanding that his estate or tenure or part thereof has been temporarily leased.

¹This section as modified by sections 23(1) and 25 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, and by the Devolution Act, 1920, was substituted for section 105 as modified by section 24(1) of the Bengal Tenancy (Amendment) Act, 1907, and by the Devolution Act, 1920, by sec. 67(2) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²The words "four months" were substituted for the words "two months" by sec. 67(1) (a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Chapter X.—Record-of-rights and settlement of rents.—Part III.—Settlement of rents and decision of disputes in cases where a settlement of land-revenue is not being or is not about to be made.—Section 105.)

(2) When, in any case in which a settlement of land-revenue is not being made or is not about to be made, the Revenue-officer has recorded, in pursuance of '[clause (j)] of section 102, that the occupant of any land claimed to be held rent-free is not entitled to hold it without payment of rent, and either the landlord or the occupant applies, within '[four months] from the date of the certificate of the final publication of the record-of-rights under section 103A, sub-section (2), for a settlement of rent, the Revenue-officer shall settle a fair and equitable rent for the land.

(3) Every application under sub-section (1) or sub-section (2) shall, notwithstanding anything contained in the Court-fees Act, 1870, bear such stamp as the '[State Government] may
 ** * * * * prescribe * * * * * VII of 1870.

(4) In settling rents under this section, the Revenue-officer shall presume, until the contrary is proved, that the existing rent is fair and equitable, and shall have regard to the rules laid down in this Act for the guidance of the Civil Court in increasing or reducing rents, as the case may be.

(5) The Revenue-officer may in any case under this section propose to the parties such rents as he considers fair and equitable; and the rents so proposed, if accepted " * * in writing by the parties, may be recorded as the fair rents, and shall be deemed to have been duly settled under this Act.

(6) Where the parties agree among themselves, by compromise or otherwise, as to the amount of the fair rent, the Revenue-officer shall satisfy himself that the amount agreed upon is fair and equitable, and, if so satisfied, but not otherwise, he shall record the amount so agreed upon as the fair and equitable rent. If not so satisfied, he shall himself settle a fair and equitable rent as provided in sub-sections (4) and (5).

¹The reference "clause (j)" was substituted for the reference "clause (i)" for Western Bengal, by sec. 24(1) of the Bengal Tenancy (Amendment) Act, 1907, and, for Eastern Bengal, by sec. 23(1) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908.

²The words "four months" were substituted for the words "two months" by sec. 67(1)(a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³The words "Provincial Government" were substituted for the words "Local Government" which were formerly substituted for the words "Government of India" by sec. 2 of, and the First Schedule to, the Devolution Act, 1920 (XXXVIII of 1920), by paragraph 3 of, and Sch. I to, the Government of India (Adaptation of Indian Laws) Order, 1937 and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁴The words "from time to time" were omitted by sec. 67(1)(b) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁵The words "by notification in the local official gazette" were omitted, *ibid*.

⁶The words "orally or" were omitted by sec. 67(1) (c), *ibid*.

[Act VIII]

(Chapter X.—Record-of-rights and settlement of rents.—Part III.—Settlement of rents and decision of disputes in cases where a settlement of land-revenue is not being or is not about to be made.—Section 105A.)

¹(7) Where the lands of the tenancy are included in different local areas for which separate records are framed, the period of limitation specified in sub-section (1) shall begin to run from the date of the certificate of final publication of the last record which contains entries relating to the tenancy.

Decision of questions arising during the course of settlement of rents under this Part.

²105A. Where, in any proceedings for the settlement of rents under this Part, any of the following issues arise:—

- (a) whether the land is, or is not, liable to the payment of rent;
- (b) whether the land, although entered in the record-of-rights as being held rent-free, is liable to the payment of rent;
- (c) whether the relation of landlord and tenants exists;
- (d) whether the land has been wrongly recorded as part of a particular estate or tenancy, or wrongly omitted from the lands of an estate or tenancy;
- (e) whether the tenant belongs to a class different from that to which he is shown in the record-of-rights as belonging;
- (f) whether the special conditions and incidents of the tenancy or any right of way or other easement attaching to the land have not, or has not, been recorded, or have, or has, been wrongly recorded;
- ³(g) whether the rent payable at the time of final publication of the record-of-rights was correctly entered, and if not, what was the rent payable at that time;

the Revenue-officer shall try and decide such issue and settle the rent under section 105 accordingly:

Provided that the Revenue-officer shall not try any issue under this section, which has been, or is already, directly and substantially in issue between the same parties, or between parties under whom they or any of them claim, and has been tried and decided, or is already being tried, by a Revenue-officer in a suit instituted before him under section 106.

¹Sub-section (7) was added by sec. 25 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

²Section 105A was inserted for Western Bengal, by sec. 26 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by sec. 26 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

³This clause was inserted by sec. 68 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Chapter X.—Record-of-rights and settlement of rents.—Part III.
—Settlement of rents and decision of disputes, in cases
where a settlement of land-revenue is not being or is not
about to be made.—Sections 105B—106.)

¹105B. When any issue is raised under section 105A, the party raising it shall pay, in addition to any other court-fees which he may be liable to pay, such court-fees as he would have been liable to pay if he had claimed relief under section 106.

Court-fees for raising an issue under section 105A.

¹105C. Except for reasons to be recorded in writing, no Revenue-officer shall award to any party any portion of his costs in a proceeding under section 105.

Costs not to be awarded ordinarily in proceedings under section 105 by Revenue-officer.

²106. (1) In proceedings under this Part, a suit may be instituted before a Revenue-officer at any time within ³[four months] from the date of the certificate of the final publication of the record-of-rights under sub-section (2) of section 103A of this Act, by presenting a plaint on stamped paper, for the decision of any dispute regarding any entry which a Revenue-officer has made in, or any omission which the said officer has made from, the record,

Institution of suit before a Revenue-officer.

whether such dispute be between landlord and tenant, or between landlords of the same or of neighbouring estates, or between tenant and tenant, or as to whether the relationship of landlord and tenant exists, or as to whether land held rent-free is properly so held, or as to any other matter;

and the Revenue-officer shall hear and decide the dispute:

Provided that the Revenue-officer may, subject to such rules as the ⁴[State Government] may ⁵[make] in this behalf, transfer any particular case or class of cases to a competent Civil Court for trial:

⁶Provided also that in any suit under this section the Revenue-officer shall not try any issue which has been, or is already,

¹Sections 105B and 105C were inserted by sec. 69 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²This section 106(1) was substituted for the original section 106 by sec. 4 of the Bengal Tenancy (Validation and Amendment) Act, 1903 (Ben. Act I of 1903). It was renumbered as sec. 106(1) for Eastern Bengal, by sec. 27(1) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908). It was also renumbered as sec. 106(1) by sec. 70(1) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³The words "four months" were substituted for the words "three months" by sec. 70(1) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁴See foot-note 3 on page 544, ante.

⁵The word "make" was substituted for the word "prescribe" by sec. 127 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁶This proviso was added to section 106. for Western Bengal, by sec. 27 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by sec. 27(2) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

[Act VIII]

(Chapter X.—Record-of-rights and settlement of rents.—Part III.
—Settlement of rents and decision of disputes, in cases
where a settlement of land-revenue is not being or is not
about to be made.—Sections 107, 108.)

directly and substantially in issue between the same parties or between parties under whom they or any of them claim, in proceedings for the settlement of rents under this Part, where such issue has been tried and decided, or is already being tried, by a Revenue-officer under section 105A.

¹(2) Where the lands to which the dispute relates are situated in local areas for which separate records are framed, the period of limitation specified in sub-section (1) shall begin to run from the date of the certificate of final publication of the last record which contains entries relating to such lands.

Procedure
to be
adopted by
Revenue-
officer.

107. ²* * ³[In all proceedings under section 105, section 105A and section 106,] the Revenue-officer shall, subject to rules made by the ⁴[State Government] under this Act adopt the procedure laid down in ⁵[the Code of Civil Procedure, 1908], for the trial of suits; and his decision in every such proceeding shall have the force and effect of a decree of a Civil Court in a suit between the parties, and, subject to the provisions of sections 108 and ⁶[115C] shall be final.

Act V o
1908.

Revision
by
Revenue-
officer.

108. Any Revenue-officer ⁷[specially] empowered by the ⁸[State Government] in this behalf may, on application or of his own motion, within twelve months from the making of any order

¹This sub-section as inserted by sec. 27(3) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908) was inserted by sec. 70(2) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²The figure and brackets "(1)" in section 107 were omitted by sec. 72(c) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³The words, figures and letter "In all proceedings under section 105, section 105A and section 106," were substituted for the words and figures "In all proceedings for the settlement of rents under this Part, and in all proceedings under section 106," for Western Bengal by sec. 28(a) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by sec. 28(a) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

⁴See foot-note 3 on page 544, *ante*.

⁵The words and figures "the Code of Civil Procedure, 1908" were substituted for the words "the Code of Civil Procedure" by sec. 128 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁶In sections 107, 108, 119 and 180A, the figures and letter "115C" were substituted for the figures and letter "109A" by sec. 71, *ibid*.

⁷Sub-section (2) was omitted by sec. 72(a) of the same Act.

⁸The word "specially" was substituted for the word "especially" by section 2 of, and the First Schedule to, the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946).

of 1885.]

(Chapter X.—Record-of-rights and settlement of rents.—Part III.
—Settlement of rents and decision of disputes, in cases
where a settlement of land-revenue is not being or is not
about to be made.—Sections 108A, 109.)

or decision under section 105, ¹[section 105A], section 106 or section 107, revise the same, whether it was made by himself or by any other Revenue-officer, but not so as to affect any order passed or decree made under section ²[115C]:

Provided that no such order or decision shall be so revised if an appeal from it ³[has been filed] under section ⁴[115C] or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

108A. (Correction by Revenue-officer of mistakes in record-of-rights.)—Transferred as section 115B, by s. 74 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928.)

109. Subject to the provisions of section ⁴[115C], a Civil Court shall not entertain any application or suit concerning any matter which is or has already been the subject of an application made, ⁵[suit instituted or proceedings taken under section 105 to 108 (both inclusive)]:

Bar to jurisdiction of Civil Courts.

⁶Provided that nothing contained in this section shall debar a Civil Court from entertaining a suit concerning any matter which—

(a) was the subject-matter of an application under section 105, or section 105A, or of a suit under section 106, if such application or suit has been dismissed for default or withdrawn, or

(b) has not been finally adjudicated upon in any such proceeding or suit.

¹The word, figures and letter "section 105A" in section 108 were inserted, for Western Bengal, by sec. 29 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and for Eastern Bengal, by sec. 29 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

²See foot-note 6 on page 634, *ante*.

³The words "has been filed" were substituted for the words "is pending" by sec. 73 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁴The figures and letter "115C" were substituted for the figures and letter "109A" by section 75(i), *ibid*.

⁵The words, brackets and figures "suit instituted or proceedings taken under sections 105 to 108 (both inclusive)" in section 109 were substituted for the words and figures "or suit instituted under section 105, section 106, section 107 or section 108," for Western Bengal, by sec. 31 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and for Eastern Bengal, by s.c. 31 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

⁶This proviso was added by sec. 75(ii) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

(Chapter X.—Record-of-rights and settlement of rents.—Part III.—Settlement of rents and decision of disputes, in cases where a settlement of land-revenue is not being or is not about to be made.—Part IV.—Supplemental Provisions.—Sections 109A-109C.)

109A. (Appeals from decisions of Revenue-officers).—Transferred as section 115C, by s. 76 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

Part IV.—Supplemental provisions.

Power of Revenue-officer to presume that agreements or compromises are lawful.

¹109B. In all proceedings under this Chapter, the Revenue-officer may presume that an agreement or compromise made or entered into by any landlord and his tenant is lawful;

but, when the terms of the agreement or compromise are such as might unfairly or inequitably affect the rights of third parties, he shall not give effect to such agreement or compromise until he has given reasonable notice to such third parties to appear and be heard in the matter and unless and until he is satisfied that the statements made by the parties to the agreement or compromise are correct.

Power to Revenue-officer to settle rents on agreement.

²109C. (1) Notwithstanding anything contained in section 109B, if, in any case while the record is being prepared, the landlord and tenant agree as to the rent which shall be recorded as payable for the tenure or holding,

a Revenue-officer ^{3*} * * * may, if he is satisfied that the rent agreed upon is fair and equitable, but not otherwise, settle such rent as a fair and equitable rent, although the terms of the agreement are such that, if they were embodied in a contract, they could not be enforced under this Act;

and the provisions of section 113 shall apply to a rent so settled.

(2) A landlord or tenant may appeal to the Special Judge appointed under section ⁴[115C], on the ground that the rent settled by the Revenue-officer, under sub-section (1), as a fair and equitable rent, was not agreed to by such landlord or tenant, and on no other ground.

¹Section 109B as inserted by sec. 33 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), was substituted for sec. 109B as inserted by sec. 33 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907) by sec. 77 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²Section 109C as inserted by sec. 33 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), was inserted after sec. 190B by sec. 78(2) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³The words "specially empowered in this behalf by the Local Government" were omitted by sec. 78(1) (a), *ibid*.

⁴The figures and letter "115C" were substituted for the figures and letter "109A" by sec. 78(1) (b), *ibid*.

of 1885.]

(Chapter X.—Record-of-rights and settlement of rents.—Part IV.—Supplemental provisions.—Sections 109D, 110.)

(3) The Board of Revenue may, on application made, or of its own motion in proceedings undertaken, within one year from the date of the order, under sub-section (1), settling a rent as a fair and equitable rent, direct the revision of the rent so settled:

Provided that no such direction shall be made until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

¹109D. A note of all rents settled under section 105, of all decisions of issues under section 105A or section 106 and of all orders regarding the same on appeal or revision under section 108 or section 115C shall be made in, or appended to, the record-of-rights finally published under sub-section (2) of section 103A, and such notes shall be considered as part of the record.

Note of decisions on record.

110. When a rent is settled by a Revenue-officer under this Chapter, it shall take effect from the beginning of the agricultural year next after the date of the decision fixing the rent or (if a settlement of land-revenue is being or is about to be made) the date of final publication of the "[record-of-rights]":

Date from which settled rent takes effect.

Provided as follows:—

- (a) if the land is comprised in an area, estate or tenure in respect of which a settlement of land-revenue is being or is about to be made, the rent settled shall, subject to the provisions of "[section 191]", take effect from the expiration of the period of the current settlement, or from such other date after the expiration of that period as may be fixed by the Revenue-officer;
- (b) if the land is not comprised in an area, estate or tenure as aforesaid, and if the existing rent has been fixed by a contract binding between the parties for an unexpired term of years, the rent settled shall take effect from the expiration of that term, or from such other date after the expiration of that term as may be fixed by the Revenue-officer.

¹This section was substituted for sec. 109D as inserted by sec. 33 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and for section 109C as inserted by sec. 33 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), by sec. 79 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²The word "record-of-rights" was substituted for the words "Settlement Rent roll" by sec. 80 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³These word and figures were substituted for the words and figures "sections 191 and 192" by sec. 28 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

[Act VIII]

(Chapter X.—Record-of-rights and settlement of rents.—Part IV.—Supplemental provisions.—Sections 111—111B.)

Stay of proceedings in Civil Court during preparation of record-of-rights.

111. When an order has been made under section 101, directing the preparation of a record-of-rights, then, subject to the provisions of section 104H, a Civil Court shall not,—

(a) where a settlement of land-revenue is being or is about to be made—until after the final publication of the record-of-rights, and

(b) where a settlement of land-revenue is not being made or is not about to be made—until ¹[four months] after the final publication of the record-of-rights,

entertain ²[any application made under-section 158, or] any suit or application for the alteration of the rent or the determination of the status of any tenant in the area to which the record-of-rights applies.

Limitation of jurisdiction of Civil Courts in matters, other than rent, relating to record-of-rights.

111A. No suit shall be brought in any Civil Court in respect of any order directing the preparation of a record-of-rights under this Chapter, or in respect of the framing, publication, signing or attestation of such a record or of any part of it, or, save as provided in section 104H, for the alteration of any entry in such a record of a rent settled under sections 104A to 104F:

Provided that any person who is dissatisfied with any entry in or omission from a record-of-rights framed in pursuance of an order made under section 101, sub-section (2), clause (d), which concerns a right of which he is in possession, may institute a suit for declaration of his right under Chapter VI of the Specific Relief Act, 1877.

I of 1877

Stay of suits in which certain issues arise.

³111B. (1) Where a record-of-rights has been prepared and finally published in respect of the land in any area in which a settlement of land-revenue is not being made, or is not about to be made, no application or suit affecting such land or any tenant thereof shall, within ⁴[four months] from the date of the certificate of final publication of such record-of-rights, be made or instituted in any Civil Court for the decision of any of the following issues, namely:—

(a) whether the land is or is not liable to the payment of rent;

¹The words "four months" in sec. 111(b) were substituted for the words "three months" by sec. 81 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. IV of 1928).

²The words and figures "any application made under section 158, or" in section 111 were inserted, for Western Bengal by sec. 34 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by sec. 34 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

³This section as inserted by sec. 35 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908), was substituted for sec. 111B, as inserted by sec. 35 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), by sec. 82(2) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁴The words "four months" in sub-sections (1) and (4) of sec. 111B were substituted for the words "three months" by sec. 82(1) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Chapter X.—Record-of-rights and settlement of rents.—Part IV.—Supplemental provisions.—Section 112.)

- (b) whether the relation of landlord and tenant exists;
- (c) whether the land is part of a particular estate or tenancy; or
- (d) whether there is any special condition or incident of the tenancy, or whether any right of way or other easement attaches to the land.

(2) If, before the final publication of the record-of-rights in such area, a suit involving the decision of any of the issues mentioned in sub-section (1) has been instituted in a Civil Court, the Revenue-officer shall not, in a suit under section 106 or in proceedings under section 105A, try such issue unless in such civil suit such issue is not in fact tried or decided.

(3) Where, in the course of settling fair rents under section 105, the Revenue-officer finds that, by reason of a suit involving the decision of any of the issues mentioned in sub-section (1) having been instituted in a Civil Court before the final publication of the record-of-rights, or before a Revenue-officer under section 106, is unable to settle a fair rent until such issue is decided, the Revenue-officer shall stay the proceedings, for the settlement of a fair rent, pending a final decision on the issue;

and, after the issue has been finally decided, he shall settle a fair rent, as if the record-of-rights has been framed in accordance with such decision.

(4) Where the making of an application or institution of a suit has been delayed owing to the operation of sub-section (1), the period of '[four months] therein mentioned shall be excluded in computing the period of limitation prescribed for such suit or application.

112. (1) The "[State Government] * * * may, on being satisfied that the exercise of the powers hereinafter mentioned is necessary in the interests of public order or of the local welfare,

Power to authorise special settlement in special cases.

"[or that any landlord is demanding or exacting rents in excess of the rents entered as payable in a record-of-rights prepared under this Chapter, or of the rents payable by reason of enhancements lawfully made after the final publication of such record, invest a Revenue-officer].

¹See foot-note 4 on page 638, *ante*.

²See foot-note 3 on page 544, *ante*.

³The words "with the previous sanction of the Governor-General in Council" in section 112(1) were repealed by sec. 2 of, and the First Schedule to, the Devolution Act, 1920 (XXXVIII of 1920), and are omitted.

⁴These words as inserted by sec. 36(1) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908), were substituted for the portion commencing with the words "or that any landlord is demanding" and ending with the words "a Revenue-officer" inserted by sec. 36(1) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), by sec. 83(1) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

(Chapter X.—Record-of-rights and settlement of rents.—Part IV.—Supplemental provisions.—Sections 113, 114.)

with the following powers or either of them, namely:—

- (a) power to settle all rents;
- (b) power, when settling rents, to reduce rents, if, in the opinion of the officer, the maintenance of existing rents would on any ground, whether specified in this Act or not, be unfair or inequitable.

(2) The powers given under this section may be made exercisable within a specified area, either generally or with reference to specified cases or classes of cases.

¹(2a) A settlement of rents under this section shall be made in the manner provided by sections 104 to 104J (both inclusive).

²(2b) If any rent other than rent for which a decree has already been obtained is in arrear in respect of a tenancy at the time when a settlement of rents is made under this section, such arrear shall not be recoverable in any Court in so far as it exceeds the amount which would have been due as rent of the tenancy had the settlement of rent taken place at the commencement of the period for which such rent is claimed.

Periods for which rents as settled are to remain unaltered.

113. (1) When the rent of a tenure or holding is settled under this Chapter, it shall not, except on the ground of a landlord's improvement or of a subsequent alteration in the area of the tenure or holding, be enhanced, in the case of a tenure or an occupancy-holding or the holding of an under-*raiyat* having occupancy rights, for fifteen years, and, in the case of a non-occupancy-holding or the holding of an under-*raiyat* not having occupancy rights, for five years; and no such rent shall be reduced within the periods aforesaid save on the ground of alteration in the area of the holding or on the ground specified in section 38, clause (a).

(2) The said period of fifteen years and five years shall be counted from the date on which the rent settled takes effect under this Chapter.

Expenses of proceedings under this Chapter.

114. (1) When the preparation of a record-of-rights has been directed or undertaken under this Chapter, in any case except where a settlement of land-revenue is being or is about to be made, the expenses incurred * * * in carrying out the

¹Sub-section (2a) was inserted, for Western Bengal, by sec. 36(2) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by sec. 36(2) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

²Sub-section (2b) was inserted by sec. 83(2) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³Sub-section (3) of section 112 was repealed by sec. 2 of, and the First Schedule to, the Devolution Act, 1920 (XXXVIII of 1920), and is omitted.

⁴The words "by the Government," in section 114(1) were repealed in Western Bengal, by sec. 37(1)(a) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, in Eastern Bengal, by sec. 37(1)(a) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908), and are omitted.

(Chapter X.—Record-of-rights and settlement of rents.—Part IV.—Supplemental provisions.—Section 114.)

visions of this Chapter in any local area, estate, tenure or part thereof (including expenses that may be incurred ¹[at any time, whether before or after the preparation of the record-of-rights, in the maintenance, repair or restoration] of boundary marks and other survey marks erected for the purpose of carrying out the provisions of this Chapter), or such part of those expenses as the ²[State Government] may direct, shall be defrayed by the landlords, tenants and occupants of land in that local area, estate, tenure or part in such proportions ³[and in such instalments (if any)] as the ²[State Government], having regard to all the circumstances, may determine.

⁴(2) The estimated amount of the expenses likely to be incurred for the maintenance, repair or restoration of boundary marks for a period not exceeding fifteen years, or such part of such amount as the ²[State Government] may direct, may be recovered in advance in the same manner as if such expenses had been already incurred.

⁵(3) The portion of the aforesaid expenses which any person is liable to pay shall be recoverable by the Government as if it were an arrear of land-revenue due in respect of the said local area, estate, tenure or part.⁶

⁷(4) The cost of preparing copies of survey maps and records-of-rights under this Chapter for distribution to landlords and tenants shall be deemed to be part of the expenses incurred in carrying out the provisions of this Chapter.

¹The words "at any time, whether before or after the preparation of the record-of-rights, in the maintenance, repair or restoration" in section 114(1) were substituted for the words "from time to time in the maintenance," for Western Bengal, by sec. 37(1)(b) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by sec. 37(1)(b) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

²See foot-note 3 on page 544, *ante*.

³The words and brackets "and in such instalments (if any)" in section 114(1) were inserted for Western Bengal, by sec. 37(1)(c) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by sec. 37(1)(c) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

⁴This sub-section (2) was inserted, for Western Bengal, by sec. 37(2) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by sec. 37(2) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

⁵The original sub-section (2) was re-numbered as sub-section (3), for Western Bengal, by sec. 37(3) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by sec. 37(3) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

⁶For an alternative method of recovering expenses, see the Land Records Maintenance Act, 1895 (Ben. Act III of 1895), secs. 28 to 32 and 36(c).

⁷This sub-section (4) was inserted, for Western Bengal, by sec. 37(4) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by sec. 37(4) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

[Act VIII]

(Chapter X.—Record-of-rights and settlement of rents.—Part IV.—Supplemental provisions.—Sections 115—115B.)

Explanation.—The word “tenure” in this section includes all revenue-free and rent-free tenures and holdings within a local area, estate or tenure.

Presumption as to fixity of rent not to apply where record-of-rights has been prepared.

115. When the particulars mentioned in section 102, clause (b), have been recorded under this Chapter in respect of any tenancy, the presumption under section 50 shall not thereafter apply to that tenancy.

Demarcation of village boundaries.

¹115A. In the demarcation of village boundaries for the purpose of making a survey and preparing a record-of-rights under this Chapter, a Revenue-officer shall, so far as is possible, and subject to the provisions of the Bengal Survey Act, 1875, Ben. A V of 18 preserve, as the unit of survey and record, the area contained within the exterior boundaries of the village maps of the revenue survey, or other survey, if any, adopted under clause (19) (b) of section 3 as defining villages;

and, where village maps prepared at such revenue or other survey exist, he shall not, without the sanction of the Board of Revenue,² adopt any other area as such unit.

Correction by Revenue-officer of mistakes in record-of-rights.

³115B. Any Revenue-officer specially empowered by the [State Government] in this behalf may, on application or of his own motion, within ⁴[two years] from the date of the certificate of the final publication of the record-of-rights under sub-section (2) of section 103A, correct any entry in such record-of-rights which he is satisfied has been made owing to a *bona fide* mistake:

Provided that no such correction shall be made if an appeal affecting such entry ⁵[has been filed] under section ⁷[115C], or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

¹Section 115A as inserted by section 38 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act II of 1908), was substituted for section 115A as inserted by sec. 38 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²Now the Board of Revenue for West Bengal—see the Bengal, Bihar and Orissa and Assam Laws Act, 1912 (VII of 1912), sec. 3, and Sch. D, item 3.

³This was formerly sec. 108A. It was transferred as sec. 115B by sec. 74 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁴See foot-note 3 on page 544, *ante*.

⁵The words “two years” were substituted for the words “twelve months” by sec. 74 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁶The words “has been filed” were substituted for the words “is pending,” *ibid*.

⁷The figures and letter “115C” were substituted for the figures and letter “109A”, *ibid*.

of 1885.]

(Chapter X.—Record-of-rights and settlement of rents.—Part IV.—Supplemental provisions.—Section 115C.)

115C. (1) The [State Government] shall appoint one or more persons to be a Special Judge or Special Judges for the purpose of hearing appeals from the decisions of Revenue-officers under sections 105 to 108 (both inclusive) [and section 115B].

Appeals from decisions of Revenue officers.

ct V of 08.

(2) An appeal shall lie to the Special Judge from the decision of a Revenue-officer under sections [105 to 108 (both inclusive) and section 115B], and the provisions of [the Code of Civil Procedure, 1908], relating to appeals shall, as nearly as may be, apply to all such appeals.

(3) Subject to the provisions of [sections 100 to 103, section 107, section 108 and section 144 of, and Order XLII in Schedule I to the Code of Civil Procedure, 1908], an appeal shall lie to the High Court from the decision of a Special Judge in any case under this section (not being a decision settling a rent) as if he were a Court subordinate to the High Court within the meaning of [section 100 of that Code]:

Provided, that, if in a second appeal the High Court alters the decision of the Special Judge in respect of any of the particulars with reference to which the rent of any tenure or holding has been settled, the Court may settle a new rent for the tenure or holding, but in so doing shall be guided by the rents of the other tenures or holdings of the same class comprised in the same record as ascertained under section 102 or settled under section 105 or section 108.

¹This was formerly sec. 109A. It was transferred as sec. 115C by sec. 76 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²See foot-note 3 on page 544, *ante*.

³The words, figures and letter "and section 115B" were inserted by sec. 76(1) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁴The words, figures and letter "105 to 108, both inclusive, and section 115B" were substituted for the words, figures and letters "105 to 108A (both inclusive)" by sec. 76(2), *ibid*.

⁵The words and figures "the Code of Civil Procedure, 1908" were substituted for the words "the Code of Civil Procedure" by sec. 128, *ibid*.

⁶These words and figures were substituted for the words and figures "Chapter XLII of the Code of Civil Procedure", *ibid*.

⁷The words and figures "section 100 of that Code" were substituted for the words "the first section of that Chapter", *ibid*.

(Chapter XI.—Non-accrual of occupancy and non-occupancy rights and record of proprietors' private lands.—Section 116.)

CHAPTER XI.

¹NON-ACCRUAL OF OCCUPANCY AND NON-OCCUPANCY RIGHTS AND RECORD OF PROPRIETORS' PRIVATE LANDS.

Saving
as to
certain
lands.

116. ²[(1)] Nothing in Chapter V shall confer a right of occupancy in, and nothing in Chapter VI shall apply to, ³lands [acquired or deemed to have been acquired under the Land Acquisition Act, 1894, or the Defence of India Rules made under the Defence of India Act, 1939, or the Requisitioned Land (Continuance of Powers) Act, 1947, or the West Bengal Land (Requisition and Acquisition) Act, 1948, or the West Bengal Land Development and Planning Act, 1948, or the West Bengal Requisitioned Land (Continuance of Powers) Act, 1951, or the Requisitioning and Acquisition of Immovable Property Act, 1952, or any other law for the time being in force providing for the compulsory acquisition of land] for the Government or for any local authority or for a Railway Company, or lands belonging to [the Government] within a Cantonment, while such lands remained the property of [the Government], or of any local authority or Railway Company [or lands owned by (the Government) or by any local authority which are used for any public work, such as a road, canal or embankment, or are required for the repair or maintenance of the same.] or to a proprietor's

I of 1894

XXXV of

1939.

XVII of

1947.

West Ben

Act II of

1948.

West Ben

Act XXI

of 1948.

West Ben

Act VIII

of 1951.

XXX of

1952.

¹The words "Non-accrual of occupancy and non-occupancy rights" were prefixed to this heading, for Western Bengal, by sec. 39 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by sec. 39 of the Eastern Bengal and Asam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

²The original sec. 116 was renumbered as sub-section (1) of that section and after sub-section (1) as so renumbered, sub-section (2) was added by sec. 2 of the Bengal Tenancy (Amendment) Act, 1955 (West Ben. Act XIX of 1955).

³The words "lands acquired under the Land Acquisition Act, 1894, for the Government or for any Local Authority or for a Railway Company, or lands belonging to the Government within a Cantonment, while such lands remained the property of the Government, or of any Local Authority or Railway Company, or to" in section 116 were inserted, for Western Bengal, by sec. 40 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by sec. 40 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908). Thereafter the words, brackets and figures within square brackets were substituted for the words, and figures "acquired under the Land Acquisition Act, 1894", by sec. 3 of the Bengal Tenancy (Amendment) Act, 1953 (West Ben. Act II of 1953).

⁴These words were substituted for the words "the Crown" by para. 3 and Schedule I of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵The words "or lands owned by the Crown or by any local authority which are used for any public work, such as a road, canal or embankment, or are required for the repair or maintenance of the same," were originally inserted by sec. 85(a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928) and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

of 1885.]

(Chapter XI.—Non-accrual of occupancy and non-occupancy rights and record of proprietors' private lands.—Sections 117—119).

private lands ¹[known as *Khamar*, *nij*, *nij-jot*, *zirat*, *sir*, or *khamat*], where any such land is held under a lease for a term of years or under a lease from year to year.

West Ben.
Act I of
1954.

²(2) Where any land has vested in the State under the provisions of the West Bengal Estates Acquisition Act, 1953, and the land has not been retained by any intermediary or any person where such intermediary or person is entitled to retain it under that Act, then, as from the date of the vesting of the land in the State, nothing in Chapter V shall confer a right of occupancy in, and nothing in Chapter VI shall apply to, the land or any part thereof.

117. The ³[State Government] may, from time to time, make an order directing a Revenue-officer to make a survey and record of all the lands in a specified local area which are a proprietor's private lands within the meaning of '[section 116].

Power for
State
Govern-
ment to
order
survey
and
record of
proprie-
tor's
private
lands.

118. In the case of any land alleged to be a proprietor's private land, on the application of the proprietor or of any tenant of the land, and on his depositing the required amount for expenses, a Revenue-officer may, subject to and in accordance with rules made in this behalf by the ⁴[State Government], ascertain and record whether the land is or is not a proprietor's private land.

Power for
Revenue-
officer to
record
private
land on
applica-
tion of pro-
prietor or
tenant.

119. When a Revenue-officer proceeds under ⁵[section 117 or 118], the provisions of '[sections 103A, 103B, 106, 107, 108, 109 and 115C] shall apply.

Procedure
for record-
ing
private
land.

¹These words were substituted for the words "known in Bengal as *khamar*, *nij* or *nij-jot*, and in Bihar as *zirai*, *sir*, or *khamat*" by sec. 85(b) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²See foot-note 2 on page 644, *ante*.

³See foot-note 3 on page 544, *ante*.

⁴The word and figures "section 116" were substituted for the words "the last foregoing section" by sec. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁵The words and figures "sections 117 or 118" were substituted for the words "either of the two last foregoing sections", *ibid*.

⁶The words, figures and letters "sections 103A, 103B, 106, 107, 108, 109 and 109A" were originally substituted for the words and figures "sections 105 to 109, both inclusive," by sec. 10 of the Bengal Tenancy (Amendment) Act, 1898 (Ben. Act III of 1898) and thereafter the figures and letter "115C" were substituted for the figures and letter "109A" by sec. 71 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

[Act VIII]

(Chapter XI.—Non-accrual of occupancy and non-occupancy rights and record of proprietors' private lands.—Chapter XII.—Distraint.—Chapter XIII.—Judicial procedure.—Sections 120—143.)

Rules for determination of proprietor's private land.

120. (1) The Revenue-officer shall record as a proprietor's private land—

- (a) land which is proved to have been cultivated as *khamar*, *zirat*, *sir*, *nij*, *nij-jot* or [*khamat*] by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the passing of this Act, and
- (b) cultivated land which is recognised by village usage as proprietor's *khamar*, *zirat*, *sir*, *nij*, *nij-jot* or [*khamat*].

(2) In determining whether any other land ought to be recorded as a proprietor's private land, the officer shall have regard to local custom, and to the question whether the land was before the second day of March, 1883, specifically let as proprietor's private land, and to any other evidence that may be produced; but shall presume that land is not a proprietor's private land until the contrary is shown.

“(2a) Notwithstanding anything contained in any agreement or compromise, or in any decree which is proved to his satisfaction to have been obtained by collusion or fraud, a Revenue-officer shall not record any land as a proprietor's private land, unless it is proved to be such by satisfactory evidence of the nature described in sub-section (1) or sub-section (2).

(3) If any question arises in a Civil Court as to whether land is or is not a proprietor's private land, the Court shall have regard to the rules laid down in this section for the guidance of Revenue-officers.

CHAPTER XII.

Distraint.

121 to 142. *Repealed by s. 87 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).*

CHAPTER XIII.

JUDICIAL PROCEDURE.

143. (1) The High Court may, from time to time, with the approval of the ¹[State Government], make rules, consistent with

¹The word “*khamat*” was substituted for the word “*kamat*” by sec. 86 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²Sub-section (2a) was inserted for Western Bengal, by sec. 41 of the Bengal Tenancy (Amendment) Act, 1907, (Ben. Act I of 1907), and, for Eastern Bengal, by sec. 41 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

³The words “Provincial Government” were originally substituted for the words “Governor-General in Council” by paragraph 3 of, and Schedule I to, the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word “State” was substituted for the word “Provincial” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

Power to modify Civil Procedure Code in its application to landlord and tenant suits.

of 1885.]

(Chapter XIII.—Judicial procedure.—Sections 144, 145.)

Act V of 1908. this Act declaring that any portions of '[the Code of Civil Procedure, 1908], shall not apply to suits between landlord and tenant as such or to any specified classes of such suits, or shall apply to them subject to modifications specified in the rules.

(2) Subject to any rules so made and subject also to the other provisions of this Act, '[the Code of Civil Procedure, 1908], shall apply to all such suits.

144. (1) The cause of action in all suits between landlord and tenant as such shall, for the purposes of '[the Code of Civil Procedure, 1908], be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the suit is brought '[and no suit between landlord and tenant as such shall be instituted in any Court other than a Court within the local jurisdiction of which the lands of the tenure or holding, as the case may be, are wholly or partly situated.]

Jurisdiction in proceedings under Act.

“(2) A landlord may institute one suit in respect of the rent of more than one tenancy, if the tenancies, in respect of the rent of which the suit is brought, are held in similar right and equal status by the same tenant under him:

Provided that—

- (i) the claim in respect of each tenancy shall be stated separately in the plaint;
- (ii) separate decrees shall be made in respect of each tenancy;
- (iii) the costs of the suit shall be apportioned by the Court in respect of each tenancy; and
- (iv) separate court-fees shall be levied on the plaint in respect of the claim on account of each tenancy.

“(3) When under this Act a Civil Court is authorised to make an order on the application of a landlord or a tenant, the application shall be made to the Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the application is brought.

145. Every *naib* or *gumashta* of a landlord empowered in this behalf by a written authority under the hand of the landlord shall, for the purposes of every such suit or application, be deemed to be the recognised agent of the landlord within the meaning of '[the Code of Civil Procedure, 1908], notwithstanding

Naibs or gumashtas to be recognised agents.

¹The words and figures “the Code of Civil Procedure, 1908”, were substituted for the words “the Code of Civil Procedure” by sec. 128 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words were inserted by sec. 88(a), *ibid.*

³This sub-section was inserted by sec. 88(b), *ibid.*

⁴Sub-section (2) was re-numbered as sub-section (3) by sec. 88(c), *ibid.*

[Act VIII]

(Chapter XIII.—Judicial procedure.—Sections 146, 146A.)

that the landlord may reside within the local limits of the jurisdiction of the Court in the suit is to be instituted or is pending, or in which the application is made:

¹Provided that notwithstanding anything contained in the Code of Civil Procedure, 1908, every such *naib* or *gumashta* may verify the pleadings on behalf of the landlord and shall not be required to obtain the permission of the Court for the purpose of such verification. Act V of 1908.

Special
register
of suits.

146. The particulars [mentioned in rule 1 of Order VII in Schedule I to the Code of Civil Procedure, 1908] shall, in the case of such suits, instead of being entered in the register of civil suits prescribed by [rule 2 of Order IV in Schedule I to the said Code], be entered in a special register to be kept by each Civil Court, in such form 'as the [State Government] may, from time to time, prescribe in this behalf.

Joint and
several
liability
for rent of
co-sharer
tenants
in a tenure
or holding.

²146A. (1) Notwithstanding anything contained in the Indian Contract Act, 1872, all co-sharer tenants in a tenure or holding and their successors in interest shall be liable to the landlord jointly and severally for the rent payable to such landlord on account of the tenure or holding, whether such rent has accrued during the time of their own occupation or during the time of the occupation of their predecessors in interest. IX of 1872.

(2) Notwithstanding anything contained elsewhere in this Act or in any other law, a decree for arrears of rent of a tenure or holding and a sale in execution of such decree shall be valid against all the co-tenants, whether they have been made parties defendant to the suit or not and against the holding in the manner provided in Chapter XIV, if the defendants to the suit represented the entire body of co-sharer tenants in the tenure or holding for the rent of which the suit was brought.

(3) The entire body of co-sharer tenants in a tenure or holding shall for the purposes of sub-section (2) be

³This proviso was added by sec. 89 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words and figures were substituted for the words and figures "referred to in section 58 of the Code of Civil Procedure" by sec. 128, *ibid.*

³These words and figures were substituted for the words "that section", *ibid.*

⁴For an order made under section 146, see the Bengal Statutory Rules and Orders, 1940, Vol. I, page 450.

⁵See foot-note 3 on page 544, *ante*.

⁶Sections 146A and 156B were inserted by sec. 90 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Chapter XIII.—Judicial procedure.—Section 146B.)

deemed to be represented by the defendants to the suit if such defendants include—

- (i) all the co-sharer tenants in the tenure or holding whose homesteads are situated in the village in which the tenure or holding is situated;
- (ii) such of the co-sharer tenants in the tenure or holding, as have, at any time during the three years previous to that for the rent of which the suit is brought, made any payment of rent for the tenure or holding;
- (iii) such co-sharer tenants who having purchased an interest in the tenure or holding, have given notice of the purchase under sub-section (3) of section 12 or [section 26C* * *], as the case may be, or, who having succeeded to an interest by inheritance have given notice of their succession under section 15; and
- (iv) all other co-sharer tenants in the tenure or holding whose names are entered in the landlord's rent-roll.

IX of
1908.

¹146B. (1) Notwithstanding anything contained in the Indian Limitation Act, 1908, any person who claims that he should have been joined as a co-sharer tenant defendant in a suit for the recovery of arrears of rent due in respect of a tenure or holding may at any time before the hearing of the suit has been commenced apply to be made a party defendant to the suit, and the Court shall consider his claim, and if it finds that he should have been so joined shall join him as a party defendant:

Procedure
in rent
suit
against
co-sharer
tenants
in a
tenure or
holding.

Provided that if any such person at any time in the course of such suit pays into Court the full amount of the claim together with such costs as the Court may direct, the suit shall be dismissed and in any such case the provisions of section 171 shall apply.

(2) The provisions of sub-sections (2) and (3) of section 146A shall, so far as may be, apply in the case of a co-sharer tenant joined as a defendant under sub-section (1) of this section.

¹The words, figures and letters "section 26C or section 26E" were originally substituted for the words, figures and letters "section 26E or section 26F" by sec. 10 of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930) and thereafter the words, figures and letter "or section 26E" were omitted by sec. 29 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

²See foot-note 6 on page 648, ante.

[Act VIII

(Chapter XIII.—Judicial procedure.—Section 147.)

Successive
rent suits.

147. ¹(1) Subject to the provisions of ²[rule I of Order XXIII in Schedule I to the Code of Civil Procedure, 1908,] where a landlord has instituted a suit against a *raiyat* for the recovery of any rent of his holding, the landlord shall not institute another suit against him for the recovery of any rent of that holding until after ³[nine] months from the date of the institution of the previous suit. Act V of 1908.

4*	5*	6*	7*	8*	9*
*	*	*	*	*	*
*	*	*	*	*	*

⁵(2) Nothing in sub-section (1) nor in rule 2 of Order II in Schedule I to the Code of Civil Procedure, 1908, shall be deemed to prevent a landlord instituting a suit for a portion of the arrears of rent in respect of a holding, provided that—

- (a) the claim in such suit shall be for the rent or the balance of the rent due for a complete agricultural year or years; and
- (b) the plaint shall contain in addition to the particulars specified in clause (b) of section 148, the total claim which might have been made on the date of the institution of the suit, and the period to which the said total claim relates.

⁶(3) Where a subsequent suit for rent is instituted by a co-sharer landlord and has been consolidated with a previous suit for rent under the provisions of sub-section (4) of section 148A, the date of the institution of the subsequent suit shall, for the purposes of this section, be deemed to be the date of the suit which was first instituted and with which it was consolidated.

¹Section 147 was renumbered as sub-section (1) of that section by sec. 30(1) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

²These words and figures were substituted for the words and figures "section 373 of the Code of Civil Procedure" by sec. 128 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³The word "nine" was substituted for the word "three" by sec. 30(1)(a) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

⁴The proviso to sec. 147 [i.e., the present sec. 147(1)] which was inserted by sec. 91 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928) was omitted by sec. 30(1)(b), *ibid.*

⁵Sub-sections (2) and (3) of sec. 147 were added by sec. 30(2), *ibid.*

of 1885.]

(Chapter XIII.—Judicial procedure.—Sections 147A, 147B.)

Act V of
1908.

147A. ²(1) Notwithstanding anything contained in ¹[rule 3 of Order XXIII in Schedule I to the Code of Civil Procedure, 1908], if any suit between landlord and tenant as such is wholly or partly adjusted by agreement or compromise, the Court ³[shall not order an agreement or compromise to be recorded and] shall not pass a decree in accordance with such agreement or compromise unless it is satisfied, for reasons to be recorded in writing, that the terms of such agreement or compromise are such that, if embodied in a contract, they could be enforced under this Act:

Compromise of suits between landlord and tenant.

Provided that, in the case of a suit instituted by the landlord to enhance the rent, the enhancement, if any, agreed upon may be decreed if the Court be satisfied, for reasons to be recorded in writing, that such enhancement is fair and equitable and in accordance with the rules laid down in this Act for the guidance of Courts in increasing rents.

²(2) Where the terms of any agreement or compromise are such as might unfairly or inequitably affect the rights of third parties, the Court shall not pass a decree in accordance with such agreement or compromise, unless and until it is satisfied by evidence that the statements made by the parties thereto are correct.

Illustration.—A, a proprietor, agrees that B, his tenant, shall be recorded as an occupancy-*raiyat*: this affects the rights of the tenants of B. The Court must, under ³[this sub-section], inquire whether B is a tenure-holder or a *raiyat* as defined in section 5. If the Court finds on the evidence that B is a *raiyat*, it may pass a decree in accordance with the agreement, but shall not do so if it finds that B is a tenure holder.

¹147B. In all areas for which a record-of-rights has been prepared and finally published under sub-section (2) of section 103A, a Civil Court shall, in all suits between landlord and tenant as such, have regard to the entries in such record-of-rights relating to the subject-matter in dispute which may be produced

Regard to be had by Civil Courts to entries in record-of-rights.

¹Section 147A as inserted by section 42 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), was substituted for sec. 147A as inserted by sec. 42 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), by sec. 92(4) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²This sub-section which was sec. 147A as inserted by sec. 42 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), was re-numbered as sub-section (1), by sec. 92(2), *ibid*.

³These words and figures were substituted for the words and figures "section 373 of the Code of Civil Procedure" by sec. 92(1) (a), *ibid*.

⁴The words "shall not order an agreement or compromise to be recorded and" were inserted by sec. 92(1)(b), *ibid*.

⁵This sub-section with the illustration which was formerly sub-section (4) of sec. 147A as inserted by the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), was inserted and numbered as sub-section (2) by sec. 92(3) (a), *ibid*.

⁶The words "this sub-section" were substituted for the words and figures "sub-section (4)" by sec. 92(3)(b), *ibid*.

⁷Section 147B was inserted for Western Bengal, by sec. 42 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and for Eastern Bengal, by sec. 42 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

(Chapter XIII.—Judicial procedure.—Section 148.)

before it, unless such entries have been proved by evidence to be incorrect; and when a Civil Court passes a decree at variance with such entries, it shall record its reasons for so doing.

Procedure
in rent
suits.

¹148. The following rules shall apply to suits for the recovery of rent:—

²(a) sections 68 to 72 of the Code of Civil Procedure, 1908, Act V of 1908. and rules 1 to 13 of Order XI, rule 83 of Order XXI and rule 2 of Order XLVIII in Schedule I to the said Code, and Schedule III to the said Code, shall not apply to any such suit;

(b) the plaint shall contain, in addition to the particulars, specified in [rules 1, 2, 4, 5 and 6 and sub-rule (2) of rule 9 of Order VII in Schedule I to the Code of Civil Procedure, 1908], a statement of the situation, designation, extent and boundaries of the land held by the tenant; or, where the plaintiff is unable to give the extent or boundaries, in lieu thereof a description sufficient for [identification. The plaint] [shall further contain a statement whether a record-of-rights has been prepared and finally published in respect of such land];

³(c) Where the suit is for the rent of land situated within an area for which a record-of-rights has been finally published, the plaint shall contain a statement of the serial number or numbers borne by the tenancy in the record-of-rights, and of the area and rental of the tenancy according to such record, unless the Court is satisfied, for reasons to be recorded in writing, that the plaintiff was prevented by any sufficient cause from furnishing such statement:

Provided that, in all cases in which the Court admits a plaint which does not contain such statement, the

¹The clauses of this section were re-numbered by sec. 129 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²This clause was substituted for the former clause by sec. 93(1), *ibid*.

³These words, brackets and figures were substituted for the words, brackets and figures "section 50 of the Code of Civil Procedure" by sec. 93(2)(i), *ibid*.

⁴These words were substituted for the words "identification and the plaint" by sec. 31(1) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

⁵The words "and the plaint" (*vide* foot-note 4 above) and these words within square brackets were inserted by sec. 93(2)(ii) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁶This clause was formerly numbered (b1). This clause as inserted by sec. 43(1) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), was substituted for clause (b1) as inserted by sec. 43(1) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), by sec. 93(4) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

[1885.]

(Chapter XIII.—Judicial procedure.—Section 148.)

Court shall, and in any other case in which it sees fit the Court may, require the Collector to supply, without payment of fee, a verified or certified copy of, or extract from, the record-of-rights relating to the tenancy:

¹Provided also that, when the plaint contains such a statement, no statement of the situation, designation, extent and boundaries of the land held by the tenant as referred to in clause (b) shall be required, except in so far as may be necessary for the purposes of clause (d);

²(d) where any changes have occurred in the area, survey plots, or rent of the tenancy since the record-of-rights was finally published, the plaint shall further contain a statement showing the particulars of such changes;

³(e) the summons shall be for the final disposal of the suit, unless the Court is of opinion that the summons should be for the settlement of issues only;

⁴(f) the service of the summons may, if the High Court by rule, either generally, or specially for any local area, so directs, be effected either in addition to, or in substitution for, any other mode of service, by forwarding the summons by post in a letter addressed to the defendant and registered under [Chapter VI of the Indian Post Office Act, 1898];

VI of
1898.

When a summons is so forwarded in a letter, and it is proved that the letter was duly posted and registered, the Court may presume that the summons has been duly served;

⁵(g) notwithstanding anything contained in the Code of Civil Procedure, 1908, or any rules made thereunder the plaintiff in a suit for recovery of arrear of rent shall not be required to supply any identifier for the purpose of serving the summons on the defendant or on any witness, and the serving officer shall serve the summons after due inquiry as to the identify of the person on whom, or the house or property where, the summons is served. The serving officer shall serve the summons in the presence of at least two persons

Act V of
1908.

¹This proviso was substituted for the second proviso to clause (b1), as formerly numbered, by sec. 93(3) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²This clause was formerly numbered (b2). It was substituted for former clause (b2) by sec. 93(5), *ibid*.

³This clause was formerly numbered (c).

⁴This clause was formerly numbered (d).

⁵These words and figures were substituted for the words and figures "Part III of the Indian Post Office Act, 1866" by sec. 2 of and the First Schedule to the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

⁶This clause was formerly numbered (d1). It was inserted by sec. 39(6) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

(Chapter XIII.—Judicial procedure.—Section 148.)

and he shall, whenever possible, require the signature of those persons to be endorsed on the original summons and, where he is unable to serve the summons, he shall, whenever possible, require the signatures of two persons of the locality to be so endorsed;

- ¹(h) notwithstanding anything contained in rule 4(3) of Order XXXII in Schedule I to the Code of Civil Procedure, 1908, the Court may serve on the natural guardian of a minor defendant in a suit for arrears of rent a notice informing him that he will be treated as the guardian of such defendant in respect of such suit, unless he appears and objects within such time, not being less than fourteen clear days after the service of the notice, as may be specified in the said notice, and, in default of compliance with such notice, such natural guardian shall, unless the Court otherwise directs, be deemed to be the duly appointed guardian of the said minor defendant for all the purposes of such suit; Act V of 1908.
- ²(i) a written statement shall not be filed without the leave of the Court, ³[but the Court shall record its reasons for granting or refusing such leave];
- ³(j) the rules for recording the evidence of witnesses ⁴[contained in rule 13 of Order XVIII in Schedule I to the Code of Civil Procedure, 1908], shall apply, whether an appeal is allowed or not;
- ⁴(k)(i) notwithstanding anything contained in the Code of Civil Procedure, 1908, where a suit is instituted for rent entered in a record-of-rights finally published under Chapter X or where the rent is payable under a registered lease between the landlord and the tenant or where the annual rent payable has been decreed in a previous suit between the landlord and the tenant, the Court may, if the plaintiff desires to proceed under this section, issue a special summons in the prescribed form;

¹This clause was formerly numbered (d2). It was inserted by sec. 93(6) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²This clause was formerly numbered (e).

³These words with square brackets were inserted by sec. 93(7) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁴This clause was formerly numbered (f).

⁵These words and figures were substituted for the words and figures "prescribed by section 189 of the Code of Civil Procedure" by sec. 93(8) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁶This clause was formerly numbered (f1). This clause was inserted by sec. 93(9), *ibid*.

[1885.]

(Chapter XIII.—Judicial procedure.—Section 148.)

¹(ia) service of the special summons referred to in sub-clause (i) shall ordinarily be effected by forwarding summons by post in a letter with acknowledgment due addressed to the defendant and registered under Chapter VI of the Indian Post Office Act, 1898; and when a summons is so forwarded, and it is proved that the letter was duly posted and registered, the Court may presume that the summons has been duly served;

(ii) when a special summons ²[referred to in sub-clause (i) has been served], if the defendant fails to appear and defend the suit, the allegations in the plaint as regards the rent due shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons together with interest at the rate of six per cent. *per annum* from the date of the suit up to the date of payment and for costs with interest thereon:

Provided that the Court may at its discretion in any case in which it thinks fit, direct the plaintiff to adduce evidence in support of his claim:

Provided also that notwithstanding anything contained in section 13 of the Indian Evidence Act, 1872, where a decree has been passed under this clause, no statement in the plaint regarding the nature, area and incidents of the tenancy or regarding any liability other than the rent claimed as due shall be evidence against the tenant in any subsequent suit or proceeding;

(iii) within seven days after the passing of a decree under sub-clause (ii) the Court shall send at the cost of the plaintiff to the defendant or defendants against whom the decree has been passed a registered postcard in the prescribed form stating the particulars contained in the decree ³[and no action in execution of a decree shall be taken until a period of sixty days has elapsed since the date of the decree];

⁴(iia) notwithstanding anything contained in section 34 of the Code of Civil Procedure, 1908, no interest shall be payable from the date of the decree on the aggregate sum decreed, if such aggregate sum is paid in full by the judgment debtor within sixty days from the date of the decree;

¹Sub-clause (ia) of clause (k) was inserted by sec. 31(2)(a) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

²These words, brackets and letter were substituted for the words. letter and brackets "has been issued under sub-clause (i)," by sec. 31(2)(b), *ibid*.

³These words in sub-clause (iii) were inserted by sec. 31(2)(c), *ibid*.

⁴This sub-clause (iia) was inserted by sec. 31(2)(d), *ibid*.

VI of
1898.

1 of 1872.

Act V of
1908.

[Act VIII]

(Chapter XIII.—Judicial procedure.—Section 148.)

- (iv) notwithstanding anything contained in rule 13 of Order IX in Schedule I to the Code of Civil Procedure, 1908, or in section 153A of this Act, where a decree is passed *ex parte* against a defendant under sub-clause (ii), he may apply to the Court by which the decree was passed for an order to set aside the decree and the Court, if it is satisfied that summons was not duly served and that there is *prima facie* evidence of a *bona fide* defence, may ¹* * * make an order setting aside the decree as against him or if necessary against all or any of the other defendants also;

Act V of 1908.

- ²(l) when any account-books, rent-rolls, collection-papers, measurement-papers, maps or extracts from records-of-rights have been produced by ³[a party] before any Court, and have been admitted in evidence in a suit pending therein,

copies of, or extracts from, such documents, '[may be] certified by a duly authorized officer of such Court to be true copies or extracts '[without the payment of any court-fee, and such copies or extracts], may, with the permission of the Court, be substituted on the record for the originals, which may then be returned to ⁴[the party];

and thereafter copies and extracts, so certified, may be admitted in evidence in any other suit instituted in the same or any other Court, unless the Court before which they are produced sees fit to require the production of the originals;

- ⁷(m) the Court may, when passing the decree, order on the oral application of the decree-holder the execution thereof, unless it is a decree for ejectment for arrears;

¹The words "upon his depositing one-half of the amount recoverable under the decree," in sub-clause (iv) were omitted by sec. 31(2)(e) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

²This clause was formerly numbered (ff). This clause as inserted by sec. 43(2) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), was substituted for clause (ff) as inserted by sec. 43(2) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907) by sec. 93(10)(b) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³The words "a party" were substituted for the words "the landlord" by sec. 93(10)(a)(i), *ibid*.

⁴The words "may be" were inserted by sec. 93(10)(a)(ii), *ibid*.

⁵These words were inserted, *ibid*.

⁶The words "the party" were substituted for the words "the landlord" by sec. 93(10)(a)(i), *ibid*.

⁷This clause was formerly numbered (g).

of 1885.]

(Chapter XIII.—Judicial procedure.—Section 148A.)

Act V of
1908.

¹(n) notwithstanding anything contained in sub-rule (3) of rule 11 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, the Court shall not, unless for special reasons to be recorded in writing, direct the decree-holder to file a copy of the decree or any fresh *vakalatnama* for the purpose of executing the decree;

²(o) notwithstanding anything contained in ³[rule 16 of Order XXI in Schedule I to the Code of Civil Procedure, 1908.] an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the land has become and is vested in him.

⁴148A. (1) A co-sharer landlord may institute a suit to recover the rent due to him in respect of his share in a tenure or holding, by making all the remaining co-sharer landlords parties defendant to the suit, and claiming that relief be granted to him in respect of his share of the rent against the entire tenure or holding.

Power of co-sharer landlord to sue for rent in respect of his share in a tenure or holding against the tenure or holding on making remaining co-sharers parties.

(2) On the plaint being admitted, the Court shall by summons in the prescribed form call upon the remaining co-sharer landlords aforesaid to join in the suit as co-plaintiffs for their shares of the rent due to them in respect of the tenure or holding up to the date of the institution of the suit.

(3) On the date named in the summons for his appearance or on any subsequent date fixed by the Court in this behalf, any co-sharer landlord, who has been summoned as defendant, may apply to be joined in the suit as a co-plaintiff, and on his paying the court-fee on the amount of his claim, he shall be joined as a co-plaintiff in respect of the rent claimed to be due to him up to the date of the institution of the suit.

(4) If it comes to the notice of the Court that any co-sharer landlord has before the service upon him of a summons under sub-section (2) instituted a separate suit to recover his share of the rent of the tenure or holding, the separate suit shall be consolidated with that brought under sub-section (1) and such co-sharer landlord shall be deemed to be a co-plaintiff and shall amend his plaint so as to claim the rent due to him up to the date of the institution of the suit under sub-section (1):

Provided that, if the Court is not competent to consolidate and try the suit, such suit shall be transferred to a Court of competent jurisdiction for consolidation and trial.

¹This clause was formerly numbered (gg). It was inserted by sec. 93(11) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²This clause was formerly numbered (h).

³These words and figures were substituted for the words and figures "section 232 of the Code of Civil Procedure" by sec. 83(12) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁴This section was substituted for the former section 148A as inserted by sec. 44 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and section 148A as inserted by sec. 44 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), by sec. 94, *ibid*.

[Act VIII]

(Chapter XIII.—Judicial procedure.—Section 148A.)

(5) The summons on all the defendants to the suit other than co-sharer landlords shall thereafter be served, and the Court shall thereupon proceed to the trial of the suit.

(6) A decree passed by the Court for the rent claimed in a suit brought in accordance with the foregoing provisions of this section shall, so far as may be, specify separately the amounts payable to each co-sharer and shall, as regards the remedies for enforcing the same, be as effectual as a decree obtained by a sole landlord or an entire body of landlords in a suit brought for the rent due to all the co-sharers.

(7) When one or more co-sharer landlords, having obtained a decree in a suit framed under this section, applies or apply for the execution of the decree by the sale of the tenure or holding, the Court shall, before proceeding to sell the tenure or holding, give notice of the application of the execution to the other co-sharers.

(8) (i) In disposing of the proceeds of a sale in execution of the decree referred to in sub-section (6) the following rules, instead of those contained in section 73 of the Code of Civil Procedure, 1908, shall be observed,— Act V of 1908.

(a) there shall first be paid to the decree-holders the costs incurred by them in bringing the tenure or holding to sale;

(b) there shall in the next place be paid to the decree-holders the amount due to them under the decree in execution of which the sale was made;

(c) if there remains a balance after these sums have been paid, there shall be paid therefrom to the decree-holders and to any defendant landlords, who have not joined as plaintiffs, but have made application in this behalf within one month from the date of the confirmation of the sale, any rent which may have fallen due to them in respect of the tenure or holding between the institution of the suit and the date of the confirmation of the sale, in proportion to their respective shares in the tenure or holding:

Provided that the Court shall issue a notice to the judgment-debtor or his pleader, if any, before ordering any such payment;

(d) the balance (if any) remaining after the payment of the rent mentioned in clause (c) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor on his application unless the Court for reasons to be recorded in writing otherwise directs.

(ii) If the judgment-debtor disputes the right of the decree-holder or of the co-sharer landlord who has been made a party defendant to receive any sum on account of rent under clause (c), the Court shall determine the dispute and the determination shall have the force of a decree.

of 1885.]

(Chapter XIII.—Judicial procedure.—Sections 149, 150.)

(9) When a suit has been instituted under the provisions of sub-section (1), no co-sharer landlord, who has been made a party defendant thereto and duly served with summons issued under sub-section (2), shall be entitled to recover, save as co-plaintiff in that suit, any rent in respect of the tenure or holding for the period in suit or for any period previous thereto.

(10) Where a suit instituted under the provisions of sub-section (1) has been withdrawn with leave to bring a fresh suit, the procedure, remedies and disabilities hereinbefore provided by this section shall apply to such fresh suit when instituted and to the parties thereto.

(11) In the event of the holding or tenure not being sold as a result of a suit instituted under sub-section (1), nothing contained in rule 2 of Order II in Schedule I to the Code of Civil Procedure 1908, shall preclude a co-sharer landlord who has been joined as plaintiff under sub-section (3) or is deemed to be a co-plaintiff under sub-section (4) from recovering by suit, rent and interest due to him and damages, if awarded, in respect of the tenure or holding for the period subsequent to the date of the institution of the suit under this section.

(12) If the rent claimed in a plaint as amended under sub-section (4) is less than the rent claimed in the original plaint in the separate suit referred to in that sub-section, the balance of rent may be recovered under the provisions of clause (c) of sub-section (8) or of sub-section (11).

149. (1) When a defendant admits that money is due from him on account of rent, but pleads that it is due not to the plaintiff but to a third person, the Court shall * * * * * refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

Payment into Court of money admitted to be due to third person.

(2) Where such a payment is made, the Court shall forthwith cause notice of the payment to be served on the third person.

(3) Unless the third person within three months from the receipt of the notice institutes a suit against the plaintiff and therein obtains an order restraining payment out of the money, it shall be paid out to the plaintiff on his application.

(4) Nothing in this section shall affect the right of any person to recover from the plaintiff money paid to him under sub-section (3).

150. When a defendant admits that money is due from him to the plaintiff on account of rent, but pleads that the amount claimed is in excess of the amount due, the Court shall * * * * * refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

Payment into Court of money admitted to be due to landlord.

¹The words "except for special reasons to be recorded in writing" were repealed in Western Bengal, by sec. 45 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, in Eastern Bengal, by sec. 45 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), and are omitted.

(Chapter XIII.—Judicial procedure.—Sections 151—153.)

Provision
as to pay-
ment of
portion of
money.

151. When a defendant is liable to pay money into Court under ¹[section 149 or 150], if the Court thinks that there are sufficient reasons for so ordering, it may take cognizance of the defendant's plea on his paying into Court such reasonable portion of the money as the Court directs.

Court to
grant
receipt.

152. When a defendant pays money into Court under either of the said sections, the Court shall give the defendant a receipt, and the receipt so given shall operate as an acquittance in the same manner and to the same extent as if it had been given by the plaintiff or the third person, as the case may be.

Appeals in
rent suits.

153. An appeal shall not lie from any decree or order passed, whether in the first instance or on appeal, in any suit instituted by a landlord for the recovery of rent where—

(a) the decree or order is passed by a District Judge, Additional Judge or Subordinate Judge, and the amount claimed in the suit does not exceed one hundred rupees; or

(b) the decree or order is passed by any other judicial officer specially empowered by the ²[High Court] to exercise final jurisdiction under this section, and the amount claimed in the suit does not exceed fifty rupees;

unless in either case the decree or order has decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto, or a question of a right to enhance or vary the rent of a tenant, or a question of the amount of rent annually payable by a tenant:

Provided that the District Judge may call for the record of any case in which a judicial officer as aforesaid has passed a decree or order to which this section applies, if it appears that the judicial officer has exercised a jurisdiction not vested in him by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of his jurisdiction illegally or with material irregularity; and may pass such order as the District Judge thinks fit.

³*Explanation.*—A question as to the regularity of the proceedings in publishing or conducting a sale in execution of a

¹The words and figures "section 149 or 150" were substituted for the words "either of the two last foregoing sections" by sec. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words were substituted for the words "Provincial Government" which were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, by sec. 32 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

³This *Explanation* was added to section 153, for Western Bengal, by sec. 46 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by sec. 46 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

of 1885.]

(Chapter XIII.—Judicial procedure.—Sections 153A—155.)

decree for arrears of rent is not a question relating to title to land or to some interest in land as between parties having conflicting claims thereto.

ct V of
108.

¹153A. Every application for an order under ²[rule 13 of Order IX in Schedule I to the Code of Civil Procedure, 1908] to set aside a decree passed *ex parte*, or for a review of judgment, under ³[section 114 and rule I of Order XLVII in Schedule I to the said Code], in a suit between a landlord and tenant as such, shall contain a statement of the injury sustained by the applicant by reason of the decree or judgment; Deposit on application to set aside *ex parte* decree.

and no such application shall be admitted---

(a) unless the applicant has, at or before the time when the application is admitted, deposited in the Court to which the application is presented the amount, if any, which he admits to be due from him to the decree-holder, or such amount as the Court may, for reasons to be recorded by it in writing, direct; or

(b) unless the Court, after considering the statement of injury is satisfied, for reasons to be recorded by it in writing that no such deposit is necessary.

154. A decree for enhancement of rent under this Act, if passed in a suit instituted in the first eight months of an agricultural year, shall ordinarily take effect on the commencement of the agricultural year next following; and, if passed in a suit instituted in the last four months of the agricultural year,⁴ shall ordinarily take effect on the commencement of the agricultural year next but one following; but nothing in this section shall prevent the Court from fixing, for special reasons, a later date from which any such decree shall take effect. Date from which decree for enhancement takes effect.

155. (1) A suit for the ejectment of a tenant, on the ground— Relief against forfeitures.

(a) that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or

(b) that he has broken a condition on breach of which he is, under the terms of a contract between him and the landlord, liable to ejectment,

¹Section 153A was inserted, for Western Bengal, by sec. 47 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by sec. 47 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

²These words and figures were substituted for the words and figures "section 108 of the Code of Civil Procedure" by sec. 128 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³These words and figures were substituted for the words and figures "section 623 of the said Code", *ibid*.

⁴For definition of "agricultural year", see sec 3(1), *ante*.

[Act VIII]

(Chapter XIII.—Judicial procedure.—Section 156.)

shall not be entertained unless the landlord has served, in the prescribed manner, a notice on the tenant specifying the particular misuse or breach complained of, and, where the misuse or breach is capable of remedy, requiring the tenant to remedy the same, and, in any case, to pay reasonable compensation for the misuse or breach, and the tenant has failed to comply within a reasonable time with that request.

(2) A decree passed in favour of a landlord in any such suit shall declare the amount of compensation which would reasonably be payable to the plaintiff for the misuse or breach, and whether, in the opinion of the Court, the misuse or breach is capable of remedy, and shall fix a period during which it shall be open to the defendant to pay that amount to the plaintiff, and, where the misuse or breach is declared to be capable of remedy, to remedy the same.

(3) The Court may, from time to time, for special reasons, extend a period fixed by it under sub-section (2).

(4) If the defendant, within the period or extended period (as the case may be) fixed by the Court under this section, pays the compensation mentioned in the decree, and, where the misuse or breach is declared by the Court to be capable of remedy, remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed.

Rights of
ejected
raiyats or
under-
raiyats in
respect of
crops and
land pre-
pared for
sowing.

156. The following rules shall apply in the case of every *raiyat* ¹[or under-*raiyat*] ejected from a holding—

- (a) when the *raiyat* ¹[or under-*raiyat*] has, before the date of his ejection, sown or planted crops in any land comprised to the holding, he shall be entitled, at the option of the landlord, either to retain possession of that land and to use it for the purpose of tending and gathering in the crops, or to receive from the landlord the value of the crops as estimated by the Court executing the decree for ejection;
- (b) when the *raiyat* ¹[or under-*raiyat*] has, before the date of his ejection, prepared for sowing any land comprised in his holding, but has not sown or planted crops in that land, he shall be entitled to receive from the landlord the value of the labour and capital expended by him in so preparing the land, as estimated by the Court executing the decree for ejection, together with reasonable interest on that value;
- (c) but a *raiyat* ¹[or under-*raiyat*] shall not be entitled to retain possession of any land or receive any sum in respect thereof under this section where, after the commencement of proceedings by the land'ord for his ejection, he has cultivated or prepared the land contrary to the local usage; and

¹The words "or under-*raiyat*" were inserted by sec. 95 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Chapter XIII.—Judicial procedure.—Sections 157, 158.)

(d) if the landlord elects under this section to allow a *raiyat* ¹[or under-*raiyat*] to retain possession of the land, the *raiyat* ¹[or under-*raiyat*] shall pay to the landlord, for the use and occupation of the land during the period for which he is allowed to retain possession of the same, such rent as the Court executing the decree for ejectment may deem reasonable.

157. When a plaintiff institutes a suit for the ejectment of a trespasser he may, if he thinks fit, claim as alternative relief that the defendant be declared liable to pay for the land in his possession a fair and equitable rent to be determined by the Court, and the Court may grant such relief accordingly.

Power for Court to fix fair rent as alternative to ejectment.

158. (1) ²[Subject to the provisions of section 111], the Court having jurisdiction to determine a suit for the possession of land may, on the application of either the landlord or the tenant of the land, determine all or any of the following matters, (namely):—

Application to determine incidents of tenancy.

- (a) the situation, quantity and boundaries of the land;
- (b) the name and description of the tenant hereof (if any);
- (c) the class ³[or classes] to which he belongs, that is to say, whether he is a tenure-holder, *raiyat* holding at fixed rates, occupancy-*raiyat*, non-occupancy-*raiyat*, or under-*raiyat* ⁴[with or without a right of occupancy], and, if he is a tenure-holder, whether he is a permanent tenure-holder or not and whether his rent is liable to enhancement during the continuance of his tenure; and
- (d) the rent payable by him at the time of the application.

(2) If, in the opinion of the Court, any of these matters cannot be satisfactorily determined without a local inquiry, the Court may direct that a local inquiry be held under ⁵[Order XXVI in Schedule I to, and section 78 of, the Code of Civil Procedure, 1908,] by such Revenue-officer as the ⁶[State Government] may

¹See foot-note 1 on page 662, ante.

²The words and figures "Subject to the provisions of section 111," in section 158(1) were inserted, for Western Bengal, by sec. 48 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and for Eastern Bengal, by sec. 48 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

³The words "or classes" were inserted by sec. 96 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁴The words "with or without a right of occupancy" were inserted, *ibid.*

⁵These words and figures were substituted for the words and figures "Chapter XXV of the Code of Civil Procedure" by sec. 128, *ibid.*

⁶See foot-note 3 on page 544, ante.

[Act VIII

(Chapter XIII A.—*Summary procedure for the recovery of rents under the Bengal Public Demands Recovery Act, 1913.*—Chapter XIV.—*Sale for arrears under decree.*—Sections 158A—160.)

authorize in that behalf by rule made under ¹[rule 9 of Order XXVI in Schedule I to the said Code].

(3) The order on any application under this section shall have the effect of, and be subject to the like appeal as, a decree.

Chapter XIII A (Sections 158A to 158AAA).

(*Summary procedure for the recovery of rents under the Bengal Public Demands Recovery Act, 1913.*)—Rep. by s. 33 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

CHAPTER XIV.

SALE FOR ARREARS UNDER DECREE.

158B. (*Passing of tenure or holding sold in execution of decree or certificate.*)—Rep. by s. 99 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

General powers of purchaser as to avoidance of incumbrances.

159. ²(1) Where a tenure or holding is sold in execution of a decree for arrears due in respect thereof, the purchaser shall take subject to the interests defined in this Chapter as “protected interests,” but with power to annul the interests defined in this Chapter as “incumbrances” :

Provided as follows:—

(a) a registered and notified incumbrance within the meaning of this Chapter shall not be so annulled except in the case hereinafter mentioned in that behalf;

(b) the power to annul shall be exercisable only in manner by this Chapter directed.

³(2) Notwithstanding anything contained in the Code of Civil Procedure, 1908, whenever a tenure or holding is sold in execution of a decree for arrears of rent and the sale is confirmed, the purchase shall take effect from the date of confirmation of the sale. Act V of 1908.

Protected interests.

160. The following shall be deemed to be protected interests within the meaning of this Chapter:—

(a) any under-tenure existing from the time of the Permanent Settlement;

¹These words and figures were substituted for the words and figures “section 392 of the said Code” by sec. 128 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²Former section 159 was re-numbered as sub-section (1) by sec. 100, *ibid.*

³This sub-section was inserted by sec. 100, *ibid.*

of 1885.]

(Chapter XIV.—Sale for arrears under decree.—Section 161.)

- (b) any under-tenure recognized by the settlement proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement;
- (c) any lease of land whereon dwelling houses, manufactories or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship or burning or burying grounds have been made;
- (d) any right of occupancy;
- (e) the right of a non-occupancy-*raiyat* to hold for five years at a rent fixed under Chapter VI by a Court, or under Chapter X by a Revenue-officer;
- (f) any right conferred on an occupancy-*raiyat* to hold at a rent which was a fair and reasonable rent at the time the right was conferred; ¹* * * * ;
- ²(ff) the right of a *raiyat* at fixed rates to hold at ³[a fixed rent or rate of rent which has not been changed during twenty years;] and
- (g) any right or interest which the landlord at whose instance the tenure or holding is sold, or his predecessor in title, has expressly and in writing given the tenant for the time being permission to create.

161. For the purposes of this Chapter—

Meaning of
“incum-
brance”
and “re-
gistered
and noti-
fied incum-
brance”.

- (a) the term “incumbrance”, used with reference to a tenancy, means any lien, sub-tenancy, easement or other right or interest created by the tenant on his tenure or holding or in limitation of his own interest therein, and not being a protected interest as defined in [section 160];
- (b) the term “registered and notified incumbrance”, used with reference to a tenure or holding sold or liable to sale in execution of a decree for an arrear of rent due in respect thereof, means an incumbrance created by a registered instrument, of which a copy has, not less than three months before the accrual of the arrear, been served on the landlord in manner hereinafter provided;

¹The word “and” in sec. 160(f) was omitted by sec. 11(I) of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

²This clause was inserted by sec. 101 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³These words in sec. 160 (ff) were substituted for the words “the fixed rent or rate of rent” by sec. 11(2) of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

⁴The word and figures “section 100” were substituted for the words “the last foregoing section” by sec. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

[Act VIII

(Chapter XIV.—Sale for arrears under decree.—Sections 162, 163.)

¹(c) the terms “arrears” and “arrear of rent” shall be deemed to include interest decreed under section 67 or damages awarded in lieu of interest under sub-section (1) of section 68.

Applica-
tion for
sale of
tenure or
holding.

162. When a decree has been passed for an arrear of rent due for a tenure or holding, and the decree-holder applies under ²[rule 11(2) of Order XXI in Schedule I to the Code of Civil Procedure, 1908,] for the attachment and sale of the tenure or holding in execution of the decree, he shall produce a statement showing the *pargana*, estate and village in which the land comprised in the tenure or holding is situate, the yearly rent payable for the same and the total amount recoverable under the decree.

Act V of
1908.

Combined
order of
attach-
ment and
proclama-
tion of sale
to be
issued.

163. ³(1) Notwithstanding anything contained in the Code of Civil Procedure, 1908, when the decree-holder makes the application mentioned in section 162, the Court, if it admits the application under rule 17 of Order XXI in Schedule I to the said Code and orders execution of the decree as applied for, shall issue a combined order of attachment and proclamation in the prescribed form.

(2) The proclamation shall, in addition to stating and specifying the particulars mentioned in ⁴[rule 66 of Order XXI in Schedule I to the said Code], announce—

(a) in the case of a tenure or a holding of a *raiyat* holding at fixed rates, that the tenure or holding will first be put up to auction subject to the registered and notified incumbrances, and will be sold subject to those incumbrances if the sum bid is sufficient to liquidate the amount of the decree and costs, and that otherwise it will, if the decree-holder so desires, be sold on a subsequent day, of which due notice will be given, with power to annul all incumbrances; and

(b) in the case of an occupancy-holding ⁵[not held at fixed rates], that the holding will be sold with power to annul all incumbrances.

¹Clause (c) was added to section 161, for Western Bengal, by sec. 51 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by sec. 51 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

²These words, brackets and figures were substituted for the words and figures “section 235 of the Code of Civil Procedure” by sec. 128 of the Bengal Tenancy Amendment) Act, 1928 (Ben. Act IV of 1928).

³This sub-section was substituted for the former sub-section by sec. 102(a), *ibid.*

⁴These words and figures were substituted for the words and figures “section 287 of the said Code” by sec. 102(b), *ibid.*

⁵The words “not held at fixed rates” were inserted by sec. 102(b), *ibid.*

of 1885.]

(Chapter XIV.—Sale for arrears under decree.—Sections 164, 165.)

¹(3) Notwithstanding anything contained in sub-rules (1) and (2) of rule 67 of Order XXI in Schedule I to the said Code, the proclamation shall be published in the following manner—

- (a) by beat of drum at some place on or adjacent to the land comprised in the tenure or holding ordered to be sold and by fixing up a copy thereof in a conspicuous place on such land,
- (b) by affixing a copy thereof in a conspicuous place at the court-house of the issuing Court,
- (c) by sending in the prescribed form by registered post to the judgment-debtor a concise statement of the order of attachment and proclamation at the time of the issue of the proclamation, and
- (d) in such other manner as may be prescribed.

(4) Notwithstanding anything contained in ²[rule 68 of Order XXI in Schedule I to the said Code], the sale shall not, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days, calculated from the date on which the copy of the proclamation has been fixed up on the land comprised in the tenure or holding ordered to be sold.

164. (1) When tenure or holding at fixed rates has been advertised for sale under ³[section 163], it shall be put up to auction subject to registered and notified incumbrances; and, if the bidding reaches a sum sufficient to liquidate the amount of the decree and costs, including the costs of sale, the tenure or holding shall be sold subject to such incumbrances.

Sale of tenure or holding subject to registered and notified incumbrances, and effect thereof.

(2) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance upon the tenure or holding not being a registered and notified incumbrance.

165. (1) If the bidding for a tenure or a holding at fixed rates put up to auction under ⁴[section 164] does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, and if the decree-holder thereupon desires that the tenure or holding be sold with power to avoid all incumbrances, the officer holding the sale shall adjourn the sale and make a fresh proclamation ⁵[in accordance with the procedure provided

Sale of tenure or holding with power to avoid all incumbrances, and effect thereof.

¹This sub-section was substituted for the former sub-section (3) by sec. 102(c) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act 1928 (Ben. Act IV of 1928)).

²These words and figures within square brackets were substituted for the words and figures "section 290 of the said Code" by sec. 102(d), *ibid*.

³The word and figures "section 163" within square brackets were substituted for the words "the last foregoing section" by sec. 126, *ibid*.

⁴The word and figures "section 164" within square brackets were substituted for the words "the last foregoing section" by sec. 126, *ibid*.

⁵These words, brackets and figures within square brackets were substituted for the words and figures "under section 289 of the Code of Civil Procedure" by sec. 128, *ibid*.

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(Chapter XIV.—Sale for arrears under decree.—
Sections 166, 167.)

in sub-section (3) of section 163], announcing that the tenure or holding will be put up to auction and sold with power to avoid all incumbrances upon a future day specified therein, not less than fifteen or more than thirty days from the date of the postponement; and upon that day the tenure or holding shall be put up to auction and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance on the tenure or holding.

Sale of
occupancy-
holding
with power
to avoid
all incum-
brances,
and effect
thereof.

166. (1) Where an occupancy holding ¹[not held at fixed rates] has been advertised for sale under section 163, it shall be put up to auction and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by ²[section 167], and not otherwise, annul any incumbrance on the holding.

Procedure
for annull-
ing incum-
brances
under sec-
tions 104,
165 or
166.

167. (1) A purchaser having power to annul an incumbrance under ³[sections 164, 165 or 166] ⁴[or under the Bengal Public Demands Recovery Act, 1913], and desiring to annul the same, may, within one year from the date of the ⁵[confirmation of the] sale or the date on which he first has notice of the incumbrance, whichever is later, present to the ⁶[Court which passed the] decree or the Revenue-officer who made the order, as the case may be, for sale of the property an application in writing, requesting him to serve on the incumbrancer a notice declaring that the incumbrance is annulled. Ben. Act III of 1913.

(2) Every such application must be accompanied by such fee for the service of the notice as the Board of Revenue may fix in this behalf.

(3) When an application for service of a notice is made ⁷[in manner provided by this section, the Court or Revenue-officer,

¹The words "not held at fixed rates" were inserted by sec. 103 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²The word and figures "section 167" were substituted for the words "the next following section" by sec. 103, *ibid.*

³The words and figures "sections 164, 165 or 166" were substituted for the words "any of the foregoing sections" by sec. 126, *ibid.*

⁴The words and figures "or under the Bengal Public Demands Recovery Act, 1913" in section 167(1) were inserted by sec. 60(1) of the Bengal Public Demands Recovery Act, 1913 (Ben. Act III of 1913).

⁵The words "confirmation of the" were inserted by sec. 104(a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁶These words were substituted for the word "Collector" by sec. 104(a), *ibid.*

⁷These words were substituted for the words "to the Collector in the manner prescribed by this section, he" by sec. 104(b), *ibid.*

of 1885.]

(Chapter XIV.—Sale for arrears under decree.—
Section 168.)

as the case may be], shall cause the notice to be served in compliance therewith, and the incumbrance shall be deemed to be annulled from the date on which it is so served.

Ben. Act
VII of
1913.

(4) When a tenure or holding is sold in execution of a decree¹ [or a certificate signed under the Bengal Public Demands Recovery Act, 1913], for arrears due in respect thereof, and there is on the tenure or holding a protected interest of the kind specified in section 160, clause (c), the purchaser may, if he has power under this Chapter² [or that Act] to avoid all incumbrances, sue to enhance the rent of the land which is the subject of the protected interest. On proof that the land is held at a rent which was not at the time the lease was granted a fair rent, the Court may enhance the rent to such amount as appears to be fair and equitable.

This sub-section shall not apply to land which has been held for a term exceeding twelve years at a fixed rent equal to the rent of good arable land.

168. (1) The³ [State Government] may, from time to time, by notification in the *Official Gazette*, direct that occupancy-holdings or any specified class of occupancy-holdings in any local area put up for sale in execution of⁴ [a decree for an arrear of rent] due on them shall, before being put up with power to avoid all incumbrances, be put up subject to registered and notified incumbrances, and may by like notification rescind any such direction.

Power to direct that occupancy-holding be dealt with under sections 159 to 167 as tenures.

(2) While any such direction remains in force in respect of any local area, all occupancy-holdings, or, as the case may be, occupancy-holdings of the specified class in that local area, shall, for the purposes of sale under⁵ [sections 159 to 167] of this Chapter, be treated in all respects as if they were tenures.

¹The words and figures "or a certificate signed under the Bengal Public Demands Recovery Act, 1913" in section 167(4), were inserted by sec. 60(2)(a) of the Bengal Public Demands Recovery Act, 1913 (Ben. Act III of 1913).

²The words "or that Act" within square brackets in section 167(4) were inserted by sec. 60(2)(b), *ibid*.

³See foot-note 3 on page 544, *ante*.

⁴The words "a decree for an arrear of rent" in section 168(1) were substituted for the words "decrees for rent" for Western Bengal, by sec. 52 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by sec. 52 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

⁵The words and figures "sections 159 to 167" were substituted for the words "the foregoing sections" by sec. 126 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

[Act VIII]

(Chapter XIV.—Sale for arrears under decree.—Sections 168A, 169.)

Attach-
ment and
sale of
tenure or
holding
for arrears
of rent due
thereon,
and liabi-
lity of
purchasers
thereof.

¹168A. (I) Notwithstanding anything contained elsewhere in this Act, or in any other law, or in any contract—

- (a) a decree for arrears of rent due in respect of a tenure or holding, whether having the effect of a rent decree or money decree, or a certificate for such arrears signed under the Bengal Public Demands Recovery Act, 1913, shall not be executed by the attachment and sale of any movable or immovable property other than the entire tenure or holding to which the decree or certificate relates:

Ben. Act
III of
1913.

Provided that the provisions of this clause shall not apply if, in any manner other than by surrender of the tenure or holding, the term of the tenancy expires before an application is made for the execution of such a decree or certificate;

- (b) the purchaser at a sale referred to in clause (a) shall be liable to pay to the decree-holder or certificate-holder the deficiency, if any, between the purchase price and the amount due under the decree or certificate together with the costs incurred in bringing the tenure or holding to sale and any rent which may have become payable to the decree-holder between the date of the institution of the suit and the date of the confirmation of the sale.

(2) In any proceeding pending on the date of the commencement of the Bengal Tenancy (Amendment) Act, 1940, in execution of a decree or certificate to which the provisions of sub-section (I) apply, if there has been attached any immovable property of the judgment-debtor other than the entire tenure or holding to which the decree or certificate relates, and if the property so attached has not been sold, the Court or Certificate-officer as the case may be shall, on the application of the judgment-debtor, direct that, on payment by the judgment-debtor, of the costs of the attachment, the property so attached shall be released.

Ben. Act
XVIII of
1940.

(3) A sale referred to in clause (a) of sub-section (I) shall not be confirmed until the purchaser has deposited with the Court or Certificate-officer, as the case may be, the sum referred to in clause (b) of that sub-section.

Rules for
disposal of
the sale-
proceeds.

169. (I) In disposing of the proceeds of a sale under this Chapter, ²[other than a sale in execution of a decree in a suit instituted under sub-section (I) of section 148A] the following rules,

¹Section 168A was inserted by section 5 of the Bengal Tenancy (Amendment) Act, 1940 (Ben. Act XVIII of 1940).

²These words, brackets, figures and letter were inserted by sec. 105(a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Chapter XIV.—Sale for arrears under decree.—Section 169.)

instead of those ¹[contained in section 73 of the Code of Civil Procedure, 1908], shall be observed, that is to say:— Act V of 1908.

- (a) there shall first be paid to the decree-holder the costs incurred by him in bringing the tenure or holding to sale;
- (b) there shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made;
- (c) if there remains a balance after these sums have been paid, there shall be paid to the decree-holder therefrom ²[the costs of the application under this section and] any rent which may have fallen due to him in respect of the tenure or holding between the institution of the suit and the date of ³[the confirmation of] the sale;
- (d) the balance (if any) remaining after the payment of the rent mentioned in clause (c) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application ⁴[unless the Court for reasons to be recorded in writing otherwise directs]:

(2) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (c), the Court shall determine the dispute, and the determination shall have the force of a decree.

¹These words and figures were substituted for the words and figures "prescribed by section 295 of the Code of Civil Procedure" by sec. 128 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²The words "the costs of the application under this section and" within square brackets were inserted by sec. 105(b), *ibid.*

³The words "the confirmation of" within square brackets in section 169-(1) (c) were inserted, for Western Bengal, by sec. 53(1) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by sec. 53(1) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

⁴The words "unless the Court for reasons to be recorded in writing otherwise directs" within square brackets were inserted by sec. 105(c) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

⁵The proviso was omitted by sec. 105(d), *ibid.*

[Act VIII]

(Chapter XIV.—Sale for arrears under decree.—
Sections 170, 171.)Act V of
1908.

¹170. (1) ²[Rules 58 to 63 (both inclusive) of Order XXI in Schedule I to the Code of Civil Procedure, 1908] shall not apply to a tenure or holding attached in execution of a decree for arrears due thereon.

Tenure or holding to be released from attachment only on payment into Court of amount of decree, with costs or on confession of satisfaction by decree-holder.

(2) When an order for the sale of a tenure or holding in execution of such a decree has been made, the tenure or holding shall not be released from attachment unless, before it is knocked down to the auction-purchaser, the amount of the decree, including the costs decreed, together with the costs incurred in order to the sale, is paid into Court, or the decree-holder makes an application for the release of the tenure or holding on the ground that the decree has been satisfied out of Court.

(3) The judgment-debtor, or any person ³[whose interests are affected by the sale], may pay money into Court under this section.

(4) The withdrawal of the amount deposited under ⁴[this section or section 174] by the decree-holder landlord shall not operate as an admission of the transferability of the tenure or holding sold in execution of the decree.

Ben. Act
III of
1913.

171. (1) ⁵[When any person whose interests are affected by the sale of a tenure or holding advertised for sale under this Chapter or in execution of a certificate for arrears of rent due in respect thereof, signed under the Bengal Public Demands Recovery Act, 1913], pays into Court the amount requisite to prevent the sale,—

Amount paid into Court to prevent sale to be in certain cases a mortgage debt on the tenure or holding

(a) the amount so paid by him shall be deemed to be a debt bearing interest at twelve *per centum per annum* and secured by a mortgage of the tenure or holding to him;

(b) his mortgage shall take priority of every other charge on the tenure or holding other than a charge for arrear of rent; and

¹Section 170 as modified by sec. 54 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908), was substituted for sec. 170 as modified by sec. 54 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), by sec. 106(1) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words, brackets and figures were substituted for the words, brackets and figures "sections 278 to 283 (both inclusive) of the Code of Civil Procedure" by sec. 128, *ibid.*

³The words "whose interests are affected by the sale" were substituted for the words "having in the tenure or holding any interest voidable on the sale" by sec. 106(2), *ibid.*

⁴The words and figures "this section or section 174" were substituted for the words, figures and letter "section 310A of the Code of Civil Procedure" by sec. 106(3), *ibid.*

⁵These words and figures were substituted for the words and figures "when any person having in a tenure or holding advertised for sale under this Chapter or in execution of a certificate for arrears of rent due in respect thereof, signed under the Bengal Public Demands Recovery Act, 1913, an interest which would be voidable upon the sale" by sec. 107, *ibid.*

of 1885.]

(Chapter XIV.—Sale for arrears under decree.—
Sections 172—174.)

(c) he shall be entitled to possession of the tenure or holding as mortgagee of the tenant, and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.

(2) Nothing in this section shall affect any other remedy to which any such person would be entitled.

172. When a tenure or holding is advertised for sale—

(a) under this Chapter, in execution of a decree against a superior tenant defaulting, or

(b) in execution of a certificate, signed under the Bengal Public Demands Recovery Act 1913, for arrears of rent due in respect of the tenure or holding from a superior tenant defaulting,

Inferior tenant paying into Court may deduct from rent.

Ben. Act
II of 1913.

or when such sale is set aside under section 174—

and an inferior tenant pays money into Court in order to prevent or set aside the sale, as the case may be, such inferior tenant may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord; and that landlord, if he is not the defaulter, may, in like manner, deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

173. (1) Notwithstanding anything contained in [rule 72 of Order XXI in Schedule I to the Code of Civil Procedure, 1908,] the holder of a decree in execution of which a tenure or holding is sold under this Chapter may, without the permission of the Court, bid for or purchase the tenure or holding.

Decree-holder may bid at sale; judgment-debtor may not.

(2) The judgment-debtor shall not bid for or purchase a tenure or holding so sold.

(3) When a judgment-debtor purchases by himself or through another person a tenure or holding so sold, the Court may, if it thinks fit, on the application of the decree-holder or any other person interested in the sale, by order set aside the sale, and the costs of the application and order, and any deficiency of price which may happen on the resale, and all expenses attending it, shall be paid by the judgment-debtor.

174. (1) Rules 89 and 90 Order XXI in Schedule I to the Code of Civil Procedure, 1908, shall not apply in cases where a tenure or holding has been sold for arrears of rent due thereon,

Application to set aside sale.

¹This section was substituted for the former section by sec. 108 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words and figures were substituted for the words and figures "section 294 of the Code of Civil Procedure" by sec. 128, *ibid*.

³This section was substituted for the former section by sec. 109, *ibid*.

[Act VIII]

(Chapter XIV.—Sale for arrears under decree.—Section 174.)

but in such cases the judgment-debtor, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Court to set aside the sale, on his depositing—

(a) for payment to the decree-holder, the amount recoverable under the decree up to the date when the deposit is made, with costs;

(b) for payment to the auction-purchaser, as penalty a sum equal to five *per cent.* of the purchase-money, but not less than one rupee.

(2) Where a person makes an application under sub-section (3) for setting aside the sale of his tenure or holding he shall not, unless he withdraws that application, be entitled to make or prosecute an application made under sub-section (1).

(3) Where a tenure or holding has been sold for arrears of rent due thereon, the decree-holder, the judgment-debtor, or any person whose interests are affected by the sale, may, at any time within six months from the date of the sale, apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting the sale:

Provided as follows:—

(a) no sale shall be set aside on any such ground unless the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud; and

(b) no application made by a judgment-debtor or any person whose interests are affected by the sale under this sub-section shall be allowed unless the applicant either deposits the amount recoverable from him in execution of the decree or satisfies the Court, for reasons to be recorded by it in writing, that no such deposit is necessary.

(4) Rule 91 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, shall not apply to any sale under this Chapter.

(5) An appeal shall lie against an order setting aside or refusing to set aside a sale:

Provided that where the Court has refused to set aside the sale on the application of the judgment-debtor or any person whose interests are affected by the sale and the amount recoverable in execution of the decree is not in deposit in Court, no such appeal shall be admitted unless the appellant deposits such amount in Court.

of 1885.]

(Chapter XIV.—Sale for arrears under decree.—
Sections 174A—177.)

174A. (1) Where no application is made under [sub-section (1) of section 174 within thirty days from the date of sale] or where such application is made and disallowed, the Court shall make an order confirming the sale and thereupon the sale shall become absolute.

Sale when to become absolute or be set aside, and return of purchase money in certain cases.

(2) Where such application is made and allowed, and where in the case of an application under sub-section (1) of section 174, the deposit required by that sub-section is made within thirty days from the date of sale, the Court shall make an order setting aside the sale:

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby.

(3) Where a sale is set aside under this section, the purchaser shall be entitled to an order against any person to whom the purchase money has been paid for its repayment with or without interests as the Court may direct.

(4) No suit to set aside an order made under this section shall be brought by any person against whom such order is made.

(5) Notwithstanding anything contained in this section, an application may be made under sub-section (3) of section 174 to set aside the sale, and where such application is allowed the order made under sub-section (1) confirming the sale shall be deemed to be cancelled.

175. (Registration of certain instruments creating incumbrances.)—*Rep. by s. 13 of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act III of 1930).*

176. Every officer who has, whether before or after the passing of this Act, registered an instrument executed by a tenant of a tenure or holding and creating an incumbrance on the tenure or holding, shall, at the request of the tenant or of the person in whose favour the incumbrance is created, and on payment by him of such fee as the [State Government] may fix in this behalf, notify the incumbrance to the landlord by causing a copy of the instrument to be served on him in the prescribed manner.

Notification of incumbrances to landlord.

177. Nothing contained in this Chapter shall be deemed to enable a person to create an incumbrance which he could not otherwise lawfully create.

Power to create incumbrances not extended.

¹Section 174A was inserted by sec. 110 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words, brackets and figures in sec. 174A(1) were substituted for the word and figures "section 174" by sec. 12(a) of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

³This sub-section was inserted by sec. 12(b), *ibid.*

⁴See foot-note 3 on page 544, *ante*.

(Chapter XV.—Contract and custom.—Section 178.)

CHAPTER XV.

Contract and custom.

Restric-
tions on
exclusion
of Act by
agreement.

178. (1) Nothing in any contract between a landlord and a tenant made before or after the passing of this Act—

- (a) shall bar in perpetuity the acquisition of an occupancy-right in land, or
- (b) shall take away an occupancy-right in existence at the date of the contract, or
- (c) shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act, or
- (d) shall take away or limit the right of a tenant, as provided by this Act, to make improvements and claim compensation for them,¹ [or
- (e) shall entitle a landlord to recover as rent, from a tenant whose rent is a share, as opposed to a fixed quantity of produce, produce in excess of half the gross produce of the holding for the year which the rent is claimed, or
- (f) shall take away or limit the rights of an under-*raiyat* as against his immediate landlord, as set forth in Chapter VII, or
- (g) shall take away or limit the right of an occupancy-*raiyat* to transfer his holding or any share or portion thereof in accordance with the provisions of sections 26B to ²26G, or
- (h) shall take away or limit the rights of occupancy-*raiyyats* in trees on their holdings, as provided in section 23A, or
- (i) shall affect the provisions of section 67 relating to interest payable on arrears of rent.]

(2) Nothing in any contract made between a landlord and a tenant since the 15th day of July, 1880, and before the passing of this Act shall prevent a *raiyat* from acquiring in accordance with this Act an occupancy-right in land.

(3) Nothing in any contract made between a landlord and a tenant after the passing of this Act shall—

- (a) prevent a *raiyat* from acquiring in accordance with this Act, an occupancy-right in land;
- (b) take away or limit the right of an occupancy-*raiyat* to use land as provided by section 23;

¹The portion within square brackets was inserted by sec. 112(a) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²The figures and letter "26G" in sec. 178(1)(g) were substituted for the figures and letter "26J" by sec. 34(1) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

of 1885.]

(Chapter XV.—Contract and custom.—Section 178.)

(c) take away the right of a *raiyat* [or under-*raiyat*] to surrender his holding in accordance with section 86;

³(d) take away the right of an occupancy-*raiyat* to sub-let subject to and in accordance with the provisions of this Act;

³(e) take away the right of a *raiyat* to apply for a reduction of rent under section 38 or section 52;

Provided as follows:—

- (i) nothing in this section shall affect the terms or conditions of a lease granted *bona fide* for the reclamation of waste land, except that, where, on or after the expiration of the term created by the lease, the lessee would under Chapter V be entitled to an occupancy-right in the land comprised in the lease, nothing in the lease shall prevent him from acquiring that right;
- (ii) when a landlord has reclaimed waste-land by his own servants or hired labourers, and subsequently lets the same or a part thereof to a *raiyat*, nothing in this Act shall affect the terms of any contract whereby a *raiyat* is prevented from acquiring an occupancy-right in the land or part during a period of thirty years from the date on which the land or part is first let to a *raiyat*;
- (iii) nothing in this section shall affect the terms or conditions of any contract for the temporary cultivation of [horticultural or] orchard land with agricultural crops.

⁵*Explanation.*—The expression “horticultural land”, as used in proviso (iii), means garden land in the occupation of a proprietor or permanent tenure-holder, which is used *bona fide* for the

¹These words were inserted by sec. 34(2) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

²Former clauses (d), (g) and (h) were omitted by sec. 112(b)(i) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³Former clauses (e) and (f) were renumbered as clauses (d) and (e), respectively, by sec. 112(b)(ii), *ibid*.

⁴The words “horticultural or” in proviso (iii) were inserted, for Western Bengal, by sec. 56(1) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by sec. 56(1) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

⁵This *Explanation* was added to proviso (iii), for Western Bengal, by sec. 56(2) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by sec. 56(2) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

[Act VIII]

(Chapter XV.—Contract and custom.—Sections 179—180A.)

cultivation of flowers or vegetables, or both, grown for the personal use of such proprietor or permanent tenure-holder and his family, and not for profit or sale.

Perma-
nent
mukarrari
leases.

179. Nothing in this Act shall be deemed to prevent a proprietor or a holder of a permanent tenure in a permanently-settled area from granting a permanent *mukarrari* lease on any terms agreed on between him and his tenant:

¹Provided that such proprietor or holder shall not be entitled to recover interest at a rate exceeding that set forth in section 67 or anything that is an *abwab* or the recovery of which is illegal under the provisions of section 74 or sub-section (3) of section 77.

Utbandi,
chur and
dearah
lands.

180. (1) Notwithstanding anything in this Act, a *raiyat*—

(a) who in any part of the country where the custom of *utbandi* prevails, holds land ordinarily let under that custom and for the time being let under that custom, or

(b) who holds land of the kind known as *chur* or *dearah*, shall not acquire a right of occupancy—

in case (a) in land ordinarily held under the custom of *utbandi* and for the time being held under that custom, or

in case (b), in the *chur* or *dearah* land,

until he has held the land in question for twelve continuous years and, until he acquires a right of occupancy in the land, he shall be liable to pay such rent for his holding as may be agreed on between him and his landlord.

(2) Chapter VI shall not apply to *raiyats* holding land under the custom of *utbandi* in respect of land held by them under that custom.

(3) The Collector may, on the application of either the landlord or the tenant or on a reference from the Civil Court, ²[or, after hearing both landlord and tenant, of his own motion] declare that any land has ceased to be *chur* or *dearah* land within the meaning of this section, and thereupon all the provisions of this Act shall apply to the land.

Fixing of
uniform
annual
money
rent in
respect of
utbandi
lands.

³180A. (1) Notwithstanding anything contained in section 180, when a *raiyat* who is or who but for the operation of section 180 in respect of land held under the custom of *utbandi* would have been, a settled *raiyat* of the village, holds or has held under the custom of *utbandi*, or under any form of tenancy locally known as *utbandi* land (hereinafter referred to as *utbandi* land), either the landlord or the *raiyat* may apply to have a uniform annual money rent determined for the land.

¹This proviso was inserted by sec. 113 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words were inserted by sec. 35 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

³Sections 180A to 180C were inserted by sec. 2 of the Bengal Tenancy (*Utbandi* Amendment) Act, 1929 (Ben. Act X of 1923).

of 1885.]

(Chapter XV.—Contract and custom.—Section 180A.)

(2) The application shall include at the discretion of the applicant either—

(a) all *utbandi* lands held in the same village by the same *raiyat* under the same landlord in which the *raiyat* has acquired a right of occupancy whether under the provisions of section 180 or otherwise, or

(b) all the lands held in the same village under the same landlord by the *raiyat* which the *raiyat*, or any deceased person whose heir he is, has cultivated as *utbandi* land at any time during the preceding period of six years if he or the said deceased person is the last person to have cultivated the land and has not or had not acquired occupancy-rights therein, or

(c) both.

(3) Subject to the provisions of sub-section (2), a single application may be made by a landlord in respect of lands held as *utbandi* lands in the same village by one or more *raiyyats* under him and a joint application may be made by two or more *raiyyats* in respect of lands held by them as *utbandi* lands in the same village under the same landlord.

(4) The application may be made to the Collector or to a Sub-divisional Officer or to a Revenue officer appointed by the '[State Government] under the designation of Settlement Officer or Assistant Settlement Officer for the purpose of making a survey and record-of-rights under Chapter X or to any other officer specially authorized by the '[State Government].

(5) The case may be determined by the officer who receives the application, or the Collector or the Settlement Officer may transfer it for disposal to some other officer competent under sub-section (4) to receive applications.

(6) The officer receiving the application or the officer to whom the case is transferred, as the case may be, shall cause notice to be given in the prescribed manner to the opposite party, and shall fix a date for the determination of the case.

If the immediate landlord or the *raiyat* is a temporary tenure-holder or *ijaradar* the officer receiving the application shall also give notice to the superior landlord in the lowest degree, who is a proprietor or permanent tenure-holder.

(7) If the application is made in respect of lands in which the *raiyat* has not acquired occupancy-rights, the officer may reject it in respect of such lands, if he is satisfied in view of all the circumstances of the case that it is unreasonable to grant it:

Provided that a refusal shall be no bar to proceedings being again taken under this section after five years from the date of refusal if in the opinion of the officer who then receives the application the circumstances have in the meantime changed.

¹See foot-note 3 on page 544, ante.

[Act VIII.]

(Chapter XV.—Contract and custom.—Section 180A.)

(8) If the application is not rejected, the officer shall then determine the sum to be paid as a uniform annual money rent, and also in the case of lands in which the *raiyat* has not acquired occupancy-rights, a premium to be paid to the landlord, and he shall order that the *raiyat* shall, in lieu of paying the rent for the land as *utbandi* land, pay the sum so determined and the premium, if any:

Provided that in any case in which an order fixing a uniform annual money rent is passed *ex parte* the opposite party may within one month of the date of such order or, when the notice has not been duly served, within one month of the date of his knowledge of such order apply to the officer by whom the order was passed for an order to set it aside and, if he satisfies the officer that the notice of the application under sub-section (1) was not duly served on him or that he was prevented by any sufficient cause from appearing when the case was determined, the officer shall set aside the order and shall appoint a day for the determination of the case. No order shall be set aside on application made under this proviso unless notice thereof has been served on the respondent thereto.

(9) In making the determination of the sum to be paid as rent, the officer shall calculate the average of the amount that was actually paid or payable as rent for the land for the previous six years and shall ordinarily declare the same as the sum to be paid as rent:

Provided that the officer may also take into consideration—

- (a) the average money rent payable by occupancy-*raiyats* for land of a similar description and with similar advantages in the vicinity;
- (b) the average rates for lands of a similar description and with similar advantages in the vicinity held as *utbandi* lands;
- (c) the average money rent payable for lands of a similar description and with similar advantages in the vicinity by *raiyats* who formerly paid their rent for those lands as *utbandi* lands but whose rents have been converted into uniform annual money rents whether under this section or by agreement or otherwise;
- (d) the charges incurred in accordance with custom by the landlord in respect of the irrigation and drainage of the *utbandi* lands and the arrangements made for continuing those charges;
- (e) the rules laid down in this Act for the guidance of the Civil Courts in enhancing or reducing rents on account of the holdings of occupancy-*raiyats*;
- (f) any sum agreed to by the parties to be paid as money rent:

Provided that the officer shall in no case determine a rent which is unfair or inequitable.

of 1885.]

(Chapter XV.—Contract and custom.—Section 180A.)

(10) The premium to be paid to the landlord in the case of lands in which the *raiyat* has not acquired occupancy-*raiyats* shall be three times the rent, or, if the application is made under clause (c) of sub-section (2), three times the portions of the rent determined under sub-section (8) on account of such lands.

(11) If the immediate landlord of the *raiyat* is a temporary tenure-holder or *ijaradar* the officer shall apportion the premium payable under sub-section (10) between the said temporary tenure-holder or *ijaradar* and his superior landlord of the lowest degree who is a proprietor or permanent tenure-holder in such manner as may appear fair and reasonable to the officer in view of all the circumstances of the case, and any sum so awarded to the said superior landlord shall be recoverable by him from the temporary tenure-holder or *ijaradar* or his successor-in-interest as an arrear of rent but shall not be recoverable by the superior landlord from the *raiyat*.

(12) The order shall be in writing, shall state the grounds on which it is made, and shall, in the absence of any special reasons to the contrary recorded in writing, take effect from the beginning of the agricultural year next after the date on which it is made.

(13) The officer shall fix the date (not being more than one month from the date of the order) by which the premium shall be paid or he may, on the application of the *raiyat*, order that the premium shall be paid by instalments not exceeding three in number, that the first instalment shall be paid at the beginning of the agricultural year in which the rent settled under sub-section (8) takes effect and that one of the remaining instalments shall be paid at the beginning of each of the succeeding agricultural years until the premium is paid in full.

(14) The premium or any instalment thereof shall be recoverable as rent, and interest shall not be payable on any instalment in respect of which default has not been made.

(15) Any order made under this section shall be subject to appeal in the manner provided in section 115C, unless the appeal in the manner provided in section 115C, unless the Part II of Chapter X, in which case the provisions of sections 104G and 104H shall apply.

(16) An application made under sub-section (1) may be amended if it appears at any time to the officer prior to the issue of the order under sub-section (7) or sub-section (8) or to the appellate or revisional Court that it does not comply with the provisions of sub-section (2) but that it can be brought into conformity with that sub-section. Such amendment may be made either on the initiative of the parties or either of them or of the officer or Court but it shall not be made unless prior notice

¹Sub-section (14) of sec. 180A was substituted for the original sub-section (14) by sec. 36 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

²See foot-note 6 on page 634, *ante*.

(Chapter XV.—Contract and custom.—Sections 180B—182.)

thereof is given to the parties, and, if such amendment is made, it shall be made only on such terms or conditions as to such officer or Court shall appear to be just.

(17) Notwithstanding anything contained elsewhere in this Act or in any other law, no suit shall be brought or application made in any Court in respect of any order passed under this section, save as is provided in this section.

Lands in respect of which a uniform annual money rent has been fixed under section 180A to cease to be *utbandi* lands.

¹180B. Whenever an order under section 180A is passed determining a uniform annual money rent for any lands, such lands shall cease to be held as *utbandi* lands with effect from the date from which the new rent takes effect, and the tenant shall hold them as an occupancy-*raiyat* from the date of the order.

Period for which rent fixed under section 180A to remain unaltered.

¹180C. (1) Where a uniform annual money rent has been fixed under section 180A, the said rent shall not, except on the ground of a landlord's improvement or of a subsequent alteration of the area of the holding, be enhanced for fifteen years; nor shall it be reduced for fifteen years, save on the ground of alteration in the area of the holding, or on the ground specified in clause (a) of sub-section (1) of section 38.

(2) The said period of fifteen years shall be counted from the date on which the order takes effect under sub-section (12) of section 180A.

Saving as to service-tenures.

181. Nothing in this Act shall affect any incident of a *ghatwali* or other service-tenure, or, in particular, shall confer a right to transfer or bequeath a service-tenure which, before the passing of this Act, was not capable of being transferred or bequeathed.

Homesteads.

¹182. When a *raiyat* or an under-*raiyat* holds his homestead otherwise than as part of his holding within the same village or any village contiguous to that village, his status in respect of his homestead shall be that of a *raiyat* or an under-*raiyat* according to the status of the landlord of the homestead, and the incidents of his tenancy of such homestead shall be governed by the provisions of this Act applicable to *raiyyats* or under-*raiyyats*, as the case may be.

¹See foot-note 3 on page 678, ante.

²As to *ghatwali* tenures, see the Bengal Ghatwali Lands Regulation, 1814 (XXIX of 1814), and the Bengal Ghatwali Lands Act, 1859 (V of 1859).

³This section 182 was substituted for the former section by sec. 114 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Chapter XV.—Contract and custom.—Chapter XVI.—Limitation.—Chapter XVII.—Supplemental.—Sections 183—186.)

183. Nothing in this Act shall affect any custom, usage or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions. Saving of custom.

* * * * *

CHAPTER XVI.

LIMITATION.

184. (1) The suits, appeals and applications specified in Schedule III annexed to this Act shall be instituted and made within the time prescribed in that Schedule for them, respectively; and every such suit or appeal instituted, and application made, after the period of limitation so ²[provided], shall be dismissed, although limitation has not been pleaded. Limitation in suits, appeals and applications in Schedule III.

(2) Nothing in this section shall revive the right to institute any suit or appeal or make any application which would have been barred by limitation if it had been instituted or made immediately before the commencement of this Act.

IX of 1908. 185. Sections 6, 7, 8 and 9 and sub-section (2) of section 29 of the Indian Limitation Act, 1908, shall not and, subject to the provisions of this Chapter, the remaining provisions of that Act, shall apply to all suits, appeals and applications specified in Schedule III annexed to this Act. Portions of the Indian Limitation Act not applicable to such suits, etc., mentioned in Schedule III.

CHAPTER XVII.

SUPPLEMENTAL.

Penalties.

186. (1) If any person, otherwise than in accordance with this Act or some other enactment for the time being in force,— Penalties for illegal interference with produce.

(a) distrains or attempts to distrain the produce of a tenant's holding, or

¹The illustrations to sec. 183 were omitted by sec. 115 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²The word "provided" was substituted for the word "prescribed" by sec. 127, *ibid.*

³This section was substituted for the former section by sec. 116, *ibid.*

⁴Clause (b) was omitted by sec. 117, *ibid.*

[Act VIII]

(Chapter XVII.—Supplemental.—Sections 186A, 187.)

- (c) except with the authority or consent of the tenant, prevents or attempts to prevent the reaping, gathering, storing, removing or otherwise dealing with any produce of a holding,

he shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code.

Act XLV
of 1860.

(2) Any person who abets within the meaning of the Indian Penal Code the doing of any act mentioned in sub-section (1), shall be deemed to have abetted the commission of criminal trespass within the meaning of that Code.

1 Damages for denial of landlord's title.

Damages
for denial
of land-
lord's
title.

¹186A. (1) When, in any suit between a landlord and tenant as such, the tenant renounces his character as tenant of the landlord by setting up without reasonable or probable cause title in a third person or himself, the Court may pass a decree in favour of the landlord for such amount of damages, not exceeding ten times the amount of the annual rent payable by the tenant, as it may consider to be just.

(2) The amount of damages decreed under sub-section (1), together with any interest accruing due thereon, shall, subject to the landlord's charge for rent, be a first charge on the tenure or holding of the tenant; and the landlord may execute such decree for damages and interest, either as a decree for a sum of money, or, ²* * * * * in any of the modes in which a decree for rent may be executed.

Agents and representatives of landlords.

Power for
landlord to
act
through
agent.

187. (1) Any appearance, application or act, in, before or to any Court or authority, required or authorized by this Act to be made or done by a landlord, may, unless the Court or authority otherwise directs, be made or done also by an agent empowered in this behalf by a written authority under the hand of the landlord.

(2) Every notice required by this Act to be served on, or given to, a landlord shall, if served on, or given to, an agent empowered as aforesaid to accept service of or receive the same on behalf of the landlord, be as effectual for the purposes of this Act as if it had been served on, or given to, the landlord in person.

¹This heading and section 186A were inserted, for Western Bengal, by sec. 67 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by sec. 57 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908).

²The words, figures and letter "subject to the provisions of section 158B" were omitted by sec. 118 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Chapter XVII.—Supplemental.—Section 188.)

(3) Every document required by this Act to be signed or certified by a landlord, except an instrument appointing or authorizing an agent, may be signed or certified by an agent of the landlord authorized in writing in that behalf.

¹188. (1) Subject to the provisions of section 148A, where two or more persons are co-sharer landlords, anything which the landlord is under this Act required or authorized to do must be done either by both or all those persons acting together or by an agent authorized to act on behalf of both or all of them:

Action to be taken collectively by co-sharer landlords or by their common agents except in certain cases.

Provided that one or more co-sharer landlords, if all the other co-sharer landlords are made parties defendant to the suit or proceeding in manner provided in sub-sections (1) and (2) of section 148A and are given the opportunity of joining in the suit or proceeding as co-plaintiffs or co-applicants, may—

- (ii) bring a suit for enhancement of the rent of a tenure under section 7 or of a holding under section 30, or for alteration of rent on account of alteration in area under section 52,
- (iii) bring a suit for ejectment of a tenant on the grounds specified in section 10, clause (b) of section 18, section 25, or clause (a), clause (b), or clause (c) of section 44, or in accordance with the provisions of ³[section 48C] or section 66,
- (iv) make application as regards improvements under sections 78, 80 and 81,
- (v) apply for measurement under sections 90 and 91,
- (vi) file an application under section 105,
- (vii) bring a suit under section 106,
- (viii) apply for record of private lands under section 118,
- (ix) apply for the determination of the incidents of a tenancy under section 158,
- (x) apply to the Collector for a declaration under sub-section (3) of section 180.

(2) Any decree passed or order made in a suit or proceeding in which the conditions set forth in sub-section (1) of this section have been complied with, shall have the effect of a decree passed

¹This section was substituted for the former section by sec. 119 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³Clause (i) of the proviso to sec. 188 (1) was omitted by sec. 37 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

²The word, figures and letter in clause (iii) of the proviso to section 188 (1) were substituted for the word and figures "section 19" by sec. 14 of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

(Chapter XVII.—Supplemental.—Sections 188A, 189.)

or order made, on the application of the sole landlord or the whole body of landlords, and shall take effect as regards the whole tenure or holding, as the case may be:

Provided that where a suit is brought under section 7 or section 30 for enhancement of rent, or under section 52 for alteration of rent, or where an application is made under section 105 by a co-sharer landlord for settlement of rent, the Court or Revenue-officer, as the case may be, when the rent has been fixed or settled shall distribute any amount by which the rent has been increased or reduced between the co-sharer landlords of the tenancy in proportion to their respective shares in such tenancy whether they have or whether they have not joined as plaintiffs or applicants, and such distribution shall be binding on all the co-sharer landlords as if they had all sued or applied for the same, and for the purposes of any appeal, application or suit in regard to such distribution they shall be deemed to have sued or applied under sub-section (1) of this section together with co-sharer plaintiff or applicant.

188A. (*Procedure in suits by joint landlords.*)—Rep. by s. 120 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

Rules under Act.

Power to make rules regarding procedure, powers of officers and service of notices.

189. The '[State Government] may, from time to time, by notification in the *Official Gazette*, make ²rules consistent with this Act—

- (1) to regulate the procedure to be followed by Revenue-officers in the discharge of any duty imposed upon them by or under this Act, and may by such rules confer upon any such officer—
 - (a) any power exercised by a Civil Court in the trial of suits;
 - (b) power to enter upon any land, and to survey, demarcate and make a map of the same, and any power exercisable by an officer under the Bengal Survey Act, 1875; and
 - (c) power to cut and thresh the crops on any land and weigh the produce, with a view to estimating the capabilities of soil; and

Ben. Act V
of 1875.

¹See foot-note 3 on page 544, *ante*.

²For rules made under section 189, see the Bengal Statutory Rules and Orders, 1940, Vol. I.

of 1885.]

(Chapter XVII.—Supplemental.—Section 189.)

¹(2) to prescribe the forms to be used, and the mode of service of notices issued, under this Act, where no form or mode is ²[provided in] this or any other Act;

⁴(4) to prescribe the authority by whom the fees deposited under sections 12, 13, 15, 17, ⁵[and 18], may be declared to be forfeited, and the mode in which such fees, when so forfeited, shall be dealt with; ⁵[and]

⁶(5) to provide for all or any of the following matters, namely—

(a) the manner of publication of—

- (i) notifications under sub-section (3) of section 1;
- (ii) price lists under sub-section (3) of section 39;
- (iii) notices under sub-section (2) of section 87;
- (iv) the draft record-of-rights under sub-section (1) of section 103A;
- (v) the record-of-rights under sub-section (2) of section 103A;
- (vi) tables of rates under sub-section (2) of section 104B;
- (vii) the draft settlement rent-roll under sub-section (1) of section 104E;

¹These sub-sections (2), (3) (which was subsequently omitted, *vide* foot-note 3) and (4) were substituted for the original sub-section (2), for Western Bengal, by sec 59 of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by sec. 59 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. & A. Act I of 1908). The original sub-section ran thus:—

“(2) to prescribe the mode of service of notices under this Act, where no mode is prescribed by this or any other Act.”

²The words “provided in” were substituted for the word “prescribed” by sec. 121 (1) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³Sub-section (3) was omitted by sec. 9(1) of the Bengal Tenancy (Amendment) Act, 1947 (Ben. Act V of 1947).

⁴The word and figures “and 18” in sub-section (4) of sec. 189 were substituted for the words, figures, letters and brackets “18, clause (a). 26C, 26E and 48H” which were substituted for the words, figures, letter and brackets “and 18, clause (a)” by sec. 121 (3) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

⁵This word within square brackets was inserted by sec. 38 (2) (b), *ibid.*

⁶Clause (5) of sec. 189 was inserted by sec. 121 (4) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

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(Chapter XVII.—Supplemental.—Section 189.)

(viii) proclamation under clause (d) of sub-section (3) of section 163; and

(ix) the rules made by authorities other than the ¹[State Government] or the High Court under sub-section (2) of section 190;

* * * * *

⁴(c) the amount of fees—

(i) for processes referred to in sub-section (2) of section 12, in sub-sections (1), (2), (3), (4) and (5) of section 26C, in sub-section (6) of section 26G, in sub-section (2) of section 85A and in sub-section (2) of section 88;

(ii) for service of notice referred to in sub-section (1) of section 13; and

(iii) referred to in sub-section (2) of section 61 and in sub-section (6) of section 88;

⁴(cc) the manner of filing the notices referred to in sub-section (2) of section 12, in sub-section (1) of section 13, and in sub-sections (1), (2), (3) and (4) of section 26C;

(d) the amount of the cost of transmission of fees or other monies;

(e) the manner of payment or tender of rent by postal money-order;

(f) the manner of verification of application under sub-section (2) of section 80;

(g) the information to be contained in the applications referred to in sub-section (2) of section 80;

(h) the form of the register referred to in clause (a) of sub-section (2) of section 99A and the particulars to be therein entered;

¹See foot-note 3 on page 544, *ante*.

²Sub-clause (b) was omitted by sec. 9(2) (a) of the Bengal Tenancy (Amendment) Act, 1947 (Ben. Act V of 1947).

³This new sub-clause (c) of sec. 189 (5) was substituted for the original sub-clause (c) by sec. 38 (3) (b) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

⁴This sub-clause was inserted by sec. 9(2) (b) of the Bengal Tenancy (Amendment) Act, 1947 (Ben. Act V of 1947).

of 1885.]

(Chapter XVII.—Supplemental.—Section 190.)

- (i) the manner of making a survey and preparing a record-of-rights under sub-section (4) of section 101;
- (j) the particulars referred to in the proviso to clause (j) of section 102;
- (k) the period of publication of the draft record-of-rights under sub-section (1) of section 103A and of the draft settlement rent-roll under sub-section (1) of section 104E;
- (l) the manner in which objections shall be considered and disposed of under sub-section (2) of section 103A;
- (m) the empowering of the "confirming authority" referred to in sub-section (4) of section 104B;
- (n) the superior Revenue authority referred to in section 104G;
- (o) the stamp to be borne by applications under sub-section (1) or sub-section (2) of section 105;
- (q) any other matter required or permitted under this Act to be prescribed.

190. (1) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

Procedure for making, publication and confirmation of rules.

(2) The publication shall be made, in the case of rules made by the State Government or High Court, in such manner as may in its opinion be sufficient for giving information to persons interested, and, in the case of rules made by any other authority, in the prescribed manner:

Provided that every such draft shall be published in the *Official Gazette*.

(3) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration.

(4) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

¹Sub-clause (p) of sec. 189 (5) was omitted by sec. 38 (3) (c) of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

²See foot-note 3 on page 544, *ante*.

[Act VIII

(Chapter XVII.—Supplemental—Sections 191, 192.)

(5) the publication in the *Official Gazette* of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made.

(6) All rules made under this Act may, from time to time, subject to the sanction (if any) required for making them, be amended, added to or cancelled by the authority having power to make the same.

Provisions as to temporarily-settled districts.

Settle-
ment of
rent of
land held
in a
district not
perma-
nently
settled.

191. Where the area comprised in a tenure or holding is situate in an estate not subject to a subsisting permanent settlement and when,

(a) land-revenue is for the first time made payable in respect of the land, or

(b) land-revenue having been previously payable in respect of it, a fresh settlement of land-revenue is made,

nothing in this Act or in any lease or contract made after the passing of the Bengal Tenancy Act, 1885, shall entitle any tenant to hold his tenancy free of rent or at a particular rent, unless in the case of a fresh settlement made under clause (b) the right so to hold beyond the term of the previous settlement has been expressly recognised at the previous settlement by a Revenue authority empowered by ¹[the State Government] to make definitively or confirm settlements, and the Revenue-officer may, notwithstanding anything in the contract between the parties by order, on the application of the landlord or of the tenant or of his own motion fix a fair and equitable rent for all grades of tenants in accordance with the principles laid down in sections 6, 7, 8, 9, 27 to 36, 38, 39, 43, 50 to 52 and 180:

Provided that, notwithstanding anything contained in sub-section (3) of section 7 he may divide the minimum profit of ten *per centum* provided for in that sub-section among two or more grades of tenure-holders if such exist.

192. (*Power to alter rent in case of new assessment of revenue.*)—Amalgamated with section 191 by sec. 122 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

¹This section was substituted for former sections 191 and 192 by sec. 122 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²The words "the Provincial Government" were originally substituted for the word "Government" by paragraph 3 of, and Schedule I to, the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

of 1885.]

(Chapter XVII.—Supplemental.—Sections 193—195.)

Rights of pasturage, etc.

193. The provisions of this Act applicable to suits for the recovery of arrears of rent shall, as far as may be, apply to suits for the recovery of anything payable or deliverable in respect of any rights of pasturage, forest-rights, rights over fisheries and the like.

Rights of pasturage, forest-rights, etc.

Saving for conditions binding on landlords.

194. Where a proprietor or permanent tenure-holder holds his estate or tenure subject to the observance of any specified rule or condition, nothing in this Act shall entitle any person occupying land within the estate or tenure to do any act which involves a violation of that rule or condition:

Tenant not enabled by Act to violate conditions binding on landlord.

¹Provided that this section shall not apply to a *raiyat* or an under-*raiyat* doing any act in exercise of the rights conferred by this Act upon *raiyats* or under-*raiyats*, as the case may be.

Saving for special enactments.

195. Nothing in this Act shall affect—

- (a) the powers and duties of Settlement-officers as defined by any law not expressly repealed by this Act;
- (b) any enactment regulating the procedure for the realisation of rents in estates belonging to the Government, or under the management of the Court of Wards or of the Revenue authorities;
- (c) any enactment relating to the avoidance of tenancies and incumbrances by a sale for arrears of the Government revenue;
- (d) any enactment relating to the partition of revenue-paying estates;
- (e) any enactment relating to *patni*-tenures in so far as it relates to those tenures, except that—

Savings for special enactments.

- (i) the provisions of section 67 and clause (i) of sub-section (I) of section 178 shall apply to all *patni*-tenures, and

¹This proviso was inserted by sec. 123 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²Clause (e) was substituted for former clause (e) as substituted by sec. 124 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928), by sec. 39 of the Bengal Tenancy (Amendment) Act, 1938 (Ben. Act VI of 1938).

(Chapter XVII.—Supplemental.—Sections 195A, 196.)

- (ii) the expression "*Khudkast raiyat* or resident and hereditary cultivator" in sub-section (3) of section 11 of the Bengal Patni Taluks Regulation, 1819, shall be deemed to include all *raiya*s ^{Reg. VI of 1819.} having a right of occupancy; or

- (f) any other special or local law not repealed either expressly or by necessary implication by this Act.

Protection for certain acts.

Protection
in certain
cases for
acts done.

¹195A. No suit or other preceeding shall be instituted against the ²[Government] or against any officer of the ³[Government] in respect of anything done by the registering officer, the Collection or the Court in regard to the receiving, distribution or payment of the landlord's fee or the landlord's transfer fee:

Provided that nothing in this section shall prevent any person entitled to receive the amount of any such landlord's fee or landlord's transfer fee or any portion thereof from recovering the same from a person to whom it has been paid by the Collector or the Court.

196. (Act to be read subject to Acts hereafter passed by Lieutenant-Governor of Bengal in Council.)—Rep. by sec. 125 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

¹This section was inserted by sec. 15 of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

²The word "Crown" was originally substituted for the words "Secretary of State for India in Council" by paragraph 3 of, and Schedule I to, the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

³The word "Crown" was originally substituted for the word "Government" by paragraph 3 of, and Schedule I to, the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

⁴The heading "Construction of Act" and sec. 196 were repealed by sec. 125 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

of 1885.]

(Schedule 1.—Repeal of enactments.)

SCHEDULE I.

(See section 2.)

REPEAL OF ENACTMENTS.

Regulations of the Bengal Code.

Number and year.	Subject of Regulation.	Extent of repeal.
VIII of 1793	A Regulation for re-enacting with modifications and amendments the rules for the Decennial Settlement of the Public Revenue payable from the lands of the <i>zamindars</i> , independent <i>talukdars</i> and other actual proprietors of land in Bengal, Bihar and Orissa, passed for those Provinces respectively on the 18th September, 1789, the 25th November, 1789, and the 10th February, 1790, and subsequent dates.	Sections 51, 52, 53, 54, 55, 64 and 65.
XII of 1805	A Regulation for the settlement and collection of the Public Revenue in the <i>zila</i> of Cuttack, including the <i>parganas</i> of Pataspur, Kamardachor and Bhograi, at present included in the <i>zila</i> of Midnapore.	Section 7.
V of 1812	A Regulation for amending some of the rules at present in force for the collection of the land revenue.	Sections 2, 3, 4, 26 and 27.
XVIII of 1812	A Regulation for explaining section 2, Regulation V, 1812, and rescinding sections 3 and 4, Regulation XLIV, 1793, and sections 3 and 4, Regulation L, 1795, and enacting other rules in lieu thereof.	The preamble and sections 2 and 3.
XI of 1825	A Regulation for declaring the rules to be observed in determining claims to lands gained by alluvion or by dereliction of a river or the sea.	In clause 1 of section 4, from and including the words "Nor if annexed to a subordinate tenure" to the end of the clause.

*(Schedule 1.—Repeal of enactments.)**Acts of the Bengal Council.*

Number and year.	Subject of Act.	Extent of repeal.
VI of 1862	An Act to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal).	The whole Act.
IV of 1867	An Act to explain and amend Act VI of 1862, passed by the Lieutenant-Governor of Bengal in Council, and to give validity to certain judgments.	The whole Act.
VIII of 1869	An Act to amend the Procedure in suits between landlords and tenants.	The whole Act.
VIII of 1879	An Act to define and limit the powers of Settlement-officers. <i>Act of the Governor General in Council.</i>	The whole Act.
X of 1859	An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.	The whole Act.

of 1885.]

(Schedule II.—Particulars of receipt and of statement of account.)

¹SCHEDULE II.

PARTICULARS OF RECEIPT AND ²[OF STATEMENT OF ACCOUNT].

(See sections 56 and 57.)

Particulars of receipt (landlord's portion).	Particulars of receipt (tenant's portion).
1. Serial number of receipt.	1. Serial number of receipt.
2. Name of village, pargana, thana.	2. Name of village, pargana, thana.
3. (a) Name of the estate and <i>tauzi</i> number to which the land appertains, and (b) (If the landlords are not the proprietors) name, if any, of the tenure or holding, of the landlords.	3. (a) Name of the estate and <i>tauzi</i> number to which the land appertains, and (b) (If the landlords are not the proprietors) name, if any, of the tenure or holding, of the landlords.
4. Name or names of the landlord or landlords and the nature of their interest.	4. Name or names of the landlord or landlords and the nature of their interest.
5. Tenant's name.	5. Tenant's name.
6. Particulars of the tenure or holding for which rent is paid,— (a) Serial number of the landlord's rent-roll, and if a record-of-rights has been prepared, serial number of the tenancy in it. (b) Area. (c) Annual rent (cash or fixed quantity of produce or both as the case may be). (d) Annual road and public works cesses. (e) <i>Jalkar</i> , <i>bankar</i> and <i>phalkar</i> .	6. Particulars of the tenure or holding for which rent is paid,— (a) Serial number of the landlord's rent-roll, and if a record-of-rights has been prepared, serial number of the tenancy in it. (b) Area. (c) Annual rent (cash or fixed quantity of produce or both as the case may be). (d) Annual road and public works cesses. (e) <i>Jalkar</i> , <i>bankar</i> and <i>phalkar</i> .
7. Amount paid, specifying for which of the items (c), (d) and (e) and for which year and <i>kist</i> .	7. Amount paid, specifying for which of the items (c), (d) and (e) and for which year and <i>kist</i> .
8. Date of payment.	8. Date of payment.
9. Signature of landlord or his authorized agent.	9. Signature of landlord or his authorized agent.

¹Schedule II was substituted for the former Schedule by sec. 130 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²These words within square brackets in the heading to Schedule II, were substituted for the word "Account" by sec. 16(a) of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

(Schedule II.—Particulars of receipt and statement of account.)

¹[Particulars of statement of account.]
(Ladlord's portion.)

1. Serial number of receipt.
2. Name of village, pargana, thana.
3. (a) Name of the estate and *tauzi* number to which the land appertains, and
(b) (If the landlords are not the proprietors) name, if any, of the tenure or holding of the landlords.
4. Name or names of the landlord or landlords and the nature of their interest.
5. Tenant's name.
6. Particulars of the tenure or holding for which rent is paid,—
(a) Serial number of the landlord's rent-roll, and if a record-of-rights has been prepared, serial number of the tenancy in it.
(b) Area.
(c) Annual rent (cash or fixed quantity of produce or both as the case may be).
(d) Annual road and public works cesses.
(e) *Jalkar*, *Bankar* and *Phalkar*.
7. Amounts due at the beginning of the year:—
(a) under each of the items (c), (d) and (e) and for which years; and
(b) as interest on above.
8. Amounts paid during the year against each of the above dues, with dates of payment and serial number of the rent-receipt granted.
9. Amounts remaining due at the end of the year.
10. Date of the statement of account.
11. Signature of landlord or his authorized agent.

¹[Particulars of statement of account.]
(Tenant's portion.)

1. Serial number of receipt.
2. Name of village, pargana, thana.
3. (a) Name of the estate and *tauzi* number to which the land appertains, and
(b) (If the landlords are not the proprietors) name, if any, of the tenure or holding of the landlords.
4. Name or names of the landlord or landlords and the nature of their interest.
5. Tenant's name.
6. Particulars of the tenure or holding for which rent is paid,—
(a) Serial number of the landlord's rent-roll, and if a record-of-rights has been prepared, serial number of the tenancy in it.
(b) Area.
(c) Annual rent (cash or fixed quantity of produce or both as the case may be).
(d) Annual road and public works cesses.
(e) *Jalkar*, *Bankar* and *Phalkar*.
7. Amounts due at the beginning of the year:—
(a) under each of the items (c), (d) and (e) and for which years; and
(b) as interest on above.
8. Amounts paid during the year against each of the above dues, with dates of payment and serial number of the rent-receipt granted.
9. Amounts remaining due at the end of the year.
10. Date of the statement of account.
11. Signature of landlord or his authorized agent.

¹These words in the sub-heading were substituted for the words "Particulars of account" by sec. 16(b) of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

of 1885.]

(Schedule III.—Limitation.)

SCHEDULE III.
LIMITATION.

(See section 184.)

PART I.—Suits.

Description of suit.	Period of limitation.	Time from which period begins to run.
To eject any tenure-holder, ² [<i>raiyat</i> or under- <i>raiyat</i>] on account of any breach of a condition in respect of which there is a contract expressly providing that ejectment shall be the penalty of such breach.	One year	The date of the breach.
³ 1(a) To eject a non-occupancy- <i>raiyat</i> ⁴ [or under- <i>raiyat</i>] on the ground of the expiration of the term of his lease.	Six months	The expiration of the term.
2. For the recovery of an arrear of rent ⁵ [in a suit brought by—		
(i) a sole landlord,		
(ii) the entire body of landlords, or		

¹The word "rent" in Schedule III includes also money recoverable under any enactment for the time being in force as if it was rent—see sec. 3(13), *ante*.

²These words within square brackets in Article 1 of Schedule III were substituted for the words "or *raiyat*" by sec. 17(1) of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

³Article 1(a) was inserted, for Western Bengal, by sec. 61(1) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by sec. 61(1) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

⁴These words in Article 1(a) of Schedule III were inserted by sec. 17(2) of the Bengal Tenancy (Amendment) Act, 1930 (Ben. Act II of 1930).

⁵These words in Article 2 were inserted, for Western Bengal, by sec. 61(a) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by sec. 61(a) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

(Schedule III.—Limitation.)

Description of suit.	Period of limitation.	Time from which period begins to run.
(iii) one or more co-sharer landlords]—		
(a) when the arrear fell due before a deposit was made under section 61 on account of the rent of the same ¹ [tenure or holding],	Six months	The date of the service of notice of the deposit ² [or presentation of the postal money-order, as the case may be].
(b) in other cases ...	Three years	³ The last day of the agricultural year in which the arrear fell due.
3. To recover possession of land claimed by the plaintiff as '[a <i>raiyyat</i> or an under- <i>raiyyat</i>].	Two years	The date of dispossession,

PART II.—Appeals.

Description of appeal.	Period of limitation.	Time from which period begins to run.
4. From any decree or order under this Act. to the Court of a District Judge or Special Judge.	Thirty days	The date of the decree or order appealed against.
5. From any order of a Collector under this Act. to the Commissioner.	Thirty days	The date of the order appealed against.

¹The words "tenure or holding" were inserted by sec. 131 of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

²The words "or presentation of the postal money-order, as the case may be" were inserted by sec. 131, *ibid*.

³This entry was substituted for the original entry, for Western Bengal, by sec. 61(b) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by sec. 61(b) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908). The original entry ran thus:—

"The last day of the Bengali year in which the arrear fell due, where that year prevails and the last day of the month of *Jeth* of the *Amlī* or *Fasli* year in which the arrear fell due, where either of those years prevails."

The words "a *raiyyat* or an under-*raiyyat*" in Article 3 were substituted for the words "an occupancy-*raiyyat*", for Western Bengal, by sec. 61(3) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by sec. 61(3) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

of 1885.]

(Schedule III.—Limitation.)

PART III.—Applications.

Description of application.	Period of limitation.	Time from which period begins to run.
<p>6. For the execution of a decree or order made ¹[in a suit between landlord and tenant to whom the provisions of this Act are applicable,] and not being a decree for a sum of money exceeding Rs. 500, exclusive of any interest which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree; except where the judgment-debtor has by fraud or force prevented the execution of the decree, in which case the period of limitation shall be governed by the provisions of the Indian Limitation Act, ² 1908:</p> <p>IX of 1908. ³Provided that, where a sale in execution of arrears of rent is set aside on application, the proceedings in execution shall continue and the time between the date of such sale and the date of the order setting it aside shall be excluded from the period of limitation provided by this Article.</p>	Three years	<p>(1) The date of the decree or order; or</p> <p>(2) where there has been an appeal, the date of final decree or order of the Appellate Court; or</p> <p>(3) where there has been a review of judgment, the date of the decision passed on the review.</p>

¹These words in Article 6 were substituted for the words "under this Act or any Act repealed by this Act", for Western Bengal, by sec. 61(4) of the Bengal Tenancy (Amendment) Act, 1907 (Ben. Act I of 1907), and, for Eastern Bengal, by sec. 61(4) of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908 (E. B. and A. Act I of 1908).

²The figures "1908" were substituted for the figures "1877" by sec. 132(1) of the Bengal Tenancy (Amendment) Act, 1928 (Ben. Act IV of 1928).

³This proviso was inserted by sec. 132(2), *ibid.*

Act XII of 1887.

(The Bengal, Agra and Assam Civil Courts Act, 1887.)

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Act XII of 1887

(The Bengal, Agra and Assam Civil Courts Act, 1887.)¹

SHORT TITLE GIVEN	...	Ben. Act IV of 1906.
REPEALED IN PART	...	<div style="display: inline-block; vertical-align: middle;"> <div style="font-size: 3em; vertical-align: middle; margin-right: 5px;">{</div> <div> Act VII of 1889. Act VIII of 1890. Act XII of 1891. Act XXVI of 1937. </div> </div>
AMENDED		<div style="display: inline-block; vertical-align: middle;"> <div style="font-size: 3em; vertical-align: middle; margin-right: 5px;">{</div> <div> Ben. Act XIX of 1935. Ben. Act I of 1939. West Ben. Act LIX of 1950. West Ben. Act XVI of 1957. </div> </div>
REPEALED IN PART AND AMENDED.		<div style="display: inline-block; vertical-align: middle;"> <div style="font-size: 3em; vertical-align: middle; margin-right: 5px;">{</div> <div> Act XVI of 1911. Act IV of 1914. Act XXXVIII of 1920. </div> </div>
ADAPTED	...	<div style="display: inline-block; vertical-align: middle;"> <div style="font-size: 3em; vertical-align: middle; margin-right: 5px;">{</div> <div> (a) The Government of India (Adaptation of Indian Laws) Order, 1937. (b) The Adaptation of Laws Order, 1950. </div> </div>

Corrected
up to 4.3.57
[Signature]
20/2/57

(11th March, 1887.)

An Act to consolidate and amend the law relating to Civil Courts in Bengal, [the North-Western Provinces and Assam].

Whereas it is expedient to consolidate and amend the law relating to Civil Courts in Bengal, [the North-Western Provinces and Assam]; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Bengal, [Agra] and Assam Civil Courts Act, 1887. Title,
extent
and com-
mence-
ment.
- (2) It extends to the territories [which were on the 11th of March, 1887.] respectively administered by the Lieutenant-Governor of Bengal, [the Lieutenant-Governor of the North-

¹LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see the Gazette of India, 1881, Pt. V, page 1455; for Preliminary Report of the Select Committee, see *ibid.*, 1886, Pt. V., page 957; for Final Report, see *ibid.*, 1887, Pt. V, page 55; and for proceedings in Council, see *ibid.*, 1881, Supplement, pages 1132, 1169, 1414 and 1423; *ibid.*, 1886, Supplement, page 1458; *ibid.*, 1887, Pt. VI, pages 31 and 33.

LOCAL EXTENT.—This Act extends to the whole of the former Province of Bengal (among other territories), with the exception of the territories not subject to the ordinary civil jurisdiction of the High Court—see sec. 1 (2).

As to the jurisdiction of the High Court in Darjeeling, see the Darjeeling (High Court's Jurisdiction) Act, 1867 (XIX of 1867).

²This word was substituted for the words "North-Western Provinces" by sec. 2 of the Bengal, Agra and Assam Civil Courts (Amendment) Act, 1911 (XVI of 1911).

³These words were substituted for the words "for the time being" by Para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

[Act XII]

(Chapter I.—Preliminary.—Chapter II.—Constitution of Civil Courts.—Sections 2—4.)

Western Provinces and the Chief Commissioner of Assam,] except such portions of those territories as for the time being are not subject to the ordinary civil jurisdiction of the High Courts
* * * and

(3) It shall come into force on the first day of July, 1887.

2. (1) [*Repeal of Acts VI of 1871 and XIX of 1887.*—*Rep. by sec. 2 and Schedule I of the Amending Act, 1891 (XII of 1891).*]

Savings.

(2) * * * All Courts constituted, appointments, nominations, rules and orders made, jurisdiction and powers conferred and lists published under the Bengal Civil Courts Act, 1871,³ or any enactment thereby repealed, or purporting expressly or impliedly to have been so constituted, made, conferred and published, shall be deemed to have been respectively constituted, made, conferred and published under this Act; and VI of

(3) Any enactment or document referring to the Bengal Civil Courts Act, 1871,³ or to any enactment thereby repealed, shall be construed to refer to this Act or to the corresponding portion thereof.

CHAPTER II.

CONSTITUTION OF CIVIL COURTS.

Classes of Courts

3. There shall be the following classes of Civil Courts under this Act, namely:

Amendment of section 3 of Act 12 of 1887.

3. In section 3 of the principal Act, in clause (3), for the words "Subordinate Judge;" the words "Assistant District Judge;" shall be substituted.

Amendment of section 4.

The [State Government] may alter the number of the District Judges, Subordinate Judges and Munsifs now fixed.

In section 4 of the principal Act,—

(a) in the marginal note, for the words "Subordinate Judges", the words "Assistant District Judges" shall be substituted;

W.B. Act no. of 1983

(b) for the words "Subordinate Judges", the words "Assistant District Judges" shall be substituted.

* The words "PROVINCIAL GOVERNMENT" were substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

[1887.]

(Chapter II.—Constitution of Civil Courts.—Sections 5—10.)

5. [Number of Munsifs.]—Rep. by sec. 2 and Schedule, Part I, of the Decentralization Act, 1914 (IV of 1914).

Amendment of section 6.

5/ In section 6 of the principal Act,—

in the marginal note, for the words "Subordinate Judges.", the words "Assistant District Judges." shall be substituted;

(b) in sub-section (1),—

(i) for the words "Subordinate Judge", the words "Assistant District Judge" shall be substituted, and

(ii) for the words "Subordinate Judges" in the two places where they occur, the words "Assistant District Judges" shall be substituted;

(c) in sub-section (2), for the words "Subordinate Judge", wherever they occur, the words "Assistant District Judge" shall be substituted.

requires the aid of Additional Judges for its speedy [State Government] may, [having consulted] the High Court, appoint such Additional Judges as may be requisite.

(2) Additional Judges so appointed shall discharge any of the functions of a District Judge which the District Judge may assign to them, and, in the discharge of those functions, they shall exercise the same powers as the District Judge.

9. Subject to the superintendence of the High Court, the District Judge shall have administrative control over all the Civil Courts under this Act within the local limits of his jurisdiction.

10. (1) In the event of the death, resignation or removal of the District Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held, the Additional Judge, or, if

Administrative control of Courts.

Temporary charge of District Court.

¹These words were substituted for the words "the Governor-General in Council has sanctioned an increase of the number of District Judges or Subordinate Judges" by sec. 2 and Schedule I of the Decentralization Act, 1914 (IV of 1914).

²The words "Provincial Government or, as the case may be, the High Court" were substituted for the words "Local Government" by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

³The words "as the case may be" were omitted by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴See foot-note 5 on page 704, ante.

⁵These words were substituted for the words "upon the recommendation of" by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁶The words "and with the previous sanction of the Governor-General in Council," which were repealed by sec. 3 of the Bengal, Agra and Assam Civil Courts (Amendment) Act, 1911 (XVI of 1911), are omitted.

[Act XII

(Chapter II.—Constitution of Civil Courts.—Sections 11—13)

Am-
men-
sec-
Assam Civil Courts Act, 1887, in its application to West Bengal,
for the purposes and in the manner hereinafter appearing;

It is hereby enacted in the Thirty-fourth Year of the Republic
of India, by the Legislature of West Bengal, as follows:—

1. (1) This Act may be called the Bengal, Agra and Assam
Civil Courts (West Bengal Amendment) Act, 1983.

(2) It shall come into force on such date as the State
Government may by notification in the *Official Gazette*,
appoint.

2. The Bengal, Agra and Assam Civil Courts Act, 1887
(hereinafter referred to as the principal Act) shall, in its applica-
tion to West Bengal, be amended for the purposes and in the
manner hereinafter provided.

3. In section 3 of the principal Act, in clause (3), for the
words "Subordinate Judge," the words "Assistant District
Judge;" shall be substituted.

Act of 1983
in sub-section (3), for the words "Subordinate Judge",
the words "Assistant District Judge" shall be
substituted;

Amend-
7-3; 83 (hrs.)
in sub-section (4), for the words "Subordinate Judge",
the words "Assistant District Judge" shall be
substituted.

exercise all or any of the jurisdiction of that Court.

12. [Temporary charge of office of Munsifs.]—Omitted by
para. 3 and the 1st Schedule of the Government of India (Adap-
tation of Indian Laws) Order, 1937.

Power to
fix local
limits
of juris-
diction
of Courts.
13. (1) The [State Government] may, by notification in the
Official Gazette, fix and alter the local limits of the jurisdiction
of any Civil Court under this Act.

(2) If the same local jurisdiction is assigned to two or more
Subordinate Judges or to two or more *Munsifs*, the District Judge
may assign to each of them such civil business cognizable by the
Subordinate Judge or *Munsif*, as the case may be, as, subject to
any general or special orders of the High Court, he thinks fit.

(3) When civil business arising in any local area is assigned
by the District Judge under sub-section (2) to one of two or more
Subordinate Judges or to one of two or more *Munsifs*, a decree
or order passed by the Subordinate Judge or *Munsif* shall not
be invalid by reason only of the case in which it was made having
arisen wholly or in part in a place beyond the local area if that
place is within the local limits fixed by the [State Government]
under sub-section (1).

¹See foot-note 5 on page 704, ante.

**The Bengal, Agra and Assam Civil Courts Act, 1887, 70¹
of 1887.]**

(Chapter II.—Constitution of Civil Courts.—Sections 14—17.)

(4) A Judge of a Court of Small Causes appointed to be also a Subordinate Judge or *Munsif* is a Subordinate Judge or *Munsif*, as the case may be, within the meaning of this section.

(5) The present local limits of the jurisdiction of every Civil Court under this Act shall be deemed to have been fixed under this section.

14. (1) The '[State Government] may, by notification in the *Official Gazette*, fix and alter the place or places at which any Civil Court under this Act is to be held. Place of sitting of Courts.

(2) All places at which any such Courts are now held shall be deemed to have been fixed under this section.

15. (1) Subject to such orders as may be made ^{2*} * Vacations
(³* * by the '[State Government]' * *) the High Court of Courts shall prepare a list of days to be observed in each year as closed holidays in the Civil Courts.

(2) The list shall be published in the '[*Official Gazette*].

(3) A judicial act done by a Civil Court on a day specified in the list shall not be invalid by reason only of its having been done on that day.

16. Every Civil Court under this Act shall use a seal of such form and dimensions as are prescribed by the '[State Government]'. Seals of Courts.

17. (1) Where any Civil Court under this Act has from any cause ceased to have jurisdiction with respect to any case, any proceeding in relation to that case which, if that Court had not ceased to have jurisdiction, might have been had therein may be had in the Court to which the business of the former Court has been transferred. Continuance of proceedings of Courts ceasing to have jurisdiction.

(2) Nothing in this section applies to cases for which provision is made '[in sections 36, 37 and 114 of, and rule 1 of Order XLVII in Schedule I to the Code of Civil Procedure, 1908,] or in any other enactment for the time being in force.

¹See foot-note 5 on page 704, *ante*.

²The words "by the Governor-General in Council, in the case of the High Court at Calcutta, and" were omitted by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

³The words "in the case of the High Court at Calcutta, and by the Local Government in other cases," had been inserted by sec. 2 and Schedule I of the Devolution Act, 1920 (XXXVIII of 1920).

⁴The words "in other cases" were omitted by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵These words were substituted for the words "local official Gazette" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁶These words and figures were substituted for the words and figures "in section 623 or section 649 of the Code of Civil Procedure" by sec. 3 of the Bengal, Agra and Assam Civil Courts (Bengal Amendment) Act, 1935 (Ben. Act XIX of 1935).

CHAPTER III.

Amend-
ment of
Section 18.
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of
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9. In section 18 of the principal Act,—

(a) in the marginal note, for the words "Judge", the words "District Judge" shall be substituted;

In section 19,—

(a) in sub-section (1), for the words "two thousand rupees", substitute the words "five thousand rupees";

(b) in sub-section (2), for the words "five thousand rupees", substitute the words "seven thousand and five hundred rupees".

(Substituted by West Ben. Act XXVI of 1969, section 3.)

[No. 8, dated the 1st October, 1973.]

in suits or such value not exceeding five thousand rupees as may be specified in the notification:

Provided that the State Government may, by notification in the *Official Gazette*, delegate to the High Court its powers under this sub-section.

Appeals
from
District
and Addi-
tional
Judges.

20. (1) Save as otherwise provided by any enactment for the time being in force, an appeal from a decree or order of a district Judge or Additional Judge shall lie to the High Court.

(2) An appeal shall not lie to the High Court from a decree or order of an Additional Judge in any case in which, if the decree or order had been made by the District Judge, an appeal would not lie to that Court.

or order

ause (a)
ousand

Amend-
ment of
section 21.

10. In section 21 of the principal Act,—

(a) in the marginal note, for the words "Subordinate Judges", the words "Assistant District Judges" shall be substituted;

(b) in sub-section (1), for the words "Subordinate Judge", the words "Assistant District Judge" shall be substituted; *And dt. 7.3.82 (10)*
Munsif shall lie to the District Judge.

¹This figure was inserted by sec. 4 of the Bengal, Agra and Assam Civil Courts (Bengal Amendment) Act, 1935 (Ben. Act. XIX of 1935).

²Substituted for the words "one thousand rupees" by sec. 3(i) of the Bengal, Agra and Assam Civil Courts (West Bengal Amendment) Act, 1950 (West Ben. Act LIX of 1950).

³Substituted for the original sub-section (2) by sec. 3(ii) of the Bengal, Agra and Assam Civil Courts (West Bengal Amendment) Act, 1950 (West Ben. Act LIX of 1950).

⁴Substituted for the words "five thousand rupees" by section 3 of the Bengal, Agra and Assam Civil Courts (West Bengal Amendment) Act, 1957 (West Ben. Act XVI of 1957).

The Bengal, Agra and Assam Civil Courts Act, 1887. 709
of 1887.]

(Chapter III.—Ordinary Jurisdiction.—Chapter IV.—Special Jurisdiction.—Sections 22, 23.)

(3) Where the function

(c) in sub-section (4), for the words "Subordinate Judge",
the words "Assistant District Judge" shall be
of 1983 substituted. *Amtd. dt. 7.3.83 (WB.)*

(4) The High Court may, with the previous sanction of the
[State Government], direct, by notification in the *Official Gazette*,
that appeals lying to the District Judge under sub-section (2)
from all or any of the decrees or orders of any *Munsif* shall be
preferred to the Court of such Subordinate Judge as may be men-
tioned in the notification, and the appeals shall thereupon be
preferred accordingly.

CHAPTER IV.

SPECIAL JURISDICTION.

Amendment of
section 22.

11. In section 22 of the principal Act,—

(a) in the marginal note, for the words "Subordinate Judges", the words "Assistant District Judges" shall be substituted;

(b) in sub-section (1), for the words "Subordinate Judge", the words "Assistant District Judge" shall be substituted. *Amtd. dt. 7.3.83 (WB.)*

23. (1) The High Court may, by general or special order, Exercise
authorize any Subordinate Judge or *Munsif* to take cognizance by Sub-

Amendment of
section 23.

12. In section 23 of the principal Act,—

(a) in the marginal note, for the words "Subordinate Judge", the words "Assistant District Judge" shall be substituted;

(b) in sub-section (1), for the words "Subordinate Judge" in the two places where they occur, the words "Assistant District Judge" shall be substituted;

¹See foot-note 5 on page 704, *ante*.

²These words and figures were substituted for the original words by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

³Clauses (b) and (c) were repealed by sec. 2 and the Schedule of the Guardians and Wards Act, 1890 (VIII of 1890), and the Succession Certificate Act, 1889 (VII of 1889), respectively, and are omitted.

(Chapter IV.—Special Jurisdiction.—Sections 24, 25.)

(d) proceedings under '[the Indian Succession Act, 1925,] XXXIX
which cannot be disposed of by District Delegates; of 1925.
and

(c) in sub-section (3), for the words "Subordinate Judge",
the words "Assistant District Judge" shall be
substituted. *Amended, 7.3.82*

Disposal of proceedings referred to 24. (1) Proceedings taken cognisance of by, or transferred to, a Subordinate Judge or *Munsif*, as the case may be, under the last foregoing section shall be disposed of by him subject to

Amendment of section 24. 13. In section 24 of the principal Act, in sub-section (1), for the words "Subordinate Judge", the words "Assistant District Judge" shall be substituted. *Amended, 7.3.82*

(2) An appeal from the order of the District Judge on the appeal from the order of a *Munsif* under this section shall lie to the High Court if a further appeal from the order of the District Judge is allowed by the law for the time being in force.

Said Act

14. In section 25 of the principal Act,—

(a) in the marginal note, for the words "Subordinate Judges", the words "Assistant District Judges" shall be substituted;

(b) for the words "Subordinate Judge" in the two places where they occur, the words "Assistant District Judge" shall be substituted.

shall be substituted for the words and figures "the Indian Act, 1881" by sec. 6(1) of the Bengal, Agra and Assam Civil Courts (Bengal Amendment) Act, 1935 (Ben. Act XIX of 1935).

²Clause (e) was omitted by sec. 6(2), *ibid.*, for the original clause which reads as follows, namely:—

"(e) references by Collectors under section 322 C of the Code of Civil Procedure."

³See foot-note 5 on page 704, *ante*.

⁴These words were substituted for the words "five hundred rupees" by sec. 7 of the Bengal, Agra and Assam Civil Courts (Bengal Amendment) Act, 1935 (Ben. Act XIX of 1935).

⁵These words were substituted for the words "two hundred and fifty rupees" by sec. 7, *ibid.*,

⁶This proviso was added by sec. 2 and Schedule, Part I, of the Decentralization Act, 1914 (IV of 1914).

⁷These words were substituted for the words "local official Gazette" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1887.]

(Chapter VII.—Supplemental Provisions.—Sections 26—36.)

26 to 35. (Chapters V and VI.)—Omitted by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

CHAPTER VII.

SUPPLEMENTAL PROVISIONS.

36. (1) The [State Government] may invest with the powers of any Civil Court under this Act, by name or in virtue of office,—

Power to confer powers of Civil Courts on officers.

(a) any officer in the [Chota Nagpur, Sambalpur,] Jalpaiguri or Darjeeling district [or in any part of the territories administered by the Chief Commissioner of Assam, except the district of Sylhet,] or,

(b) after consultation with the High Court, any officer serving in any other part of the territories to which this Act extends and belonging to a class defined in this behalf by the [State Government] * * * * *

(2) Nothing in [sections 4, 5, 6, 8, 10 or 11] applies to any officer so invested, but all the other provisions of this Act shall, so far as those provisions can be made applicable, apply to him as if he were a Judge of the Court with the powers of which he is invested.

(3) Where, in the territories mentioned in clause (a) of sub-section (1), the same local jurisdiction is assigned to two or more officers invested with it—

15. In section 36 of the principal Act, in sub-section (3), for the words "Subordinate Judge", the words "Assistant District Judge" shall be substituted. *W.B. Act no. 7 of 1923*
Amend. 7-2-23 (L.N.)

the powers of a Munsif.

(4) Where the place at which the Court of an officer invested with powers under sub-section (1) is to be held has not been fixed under section 14, the Court may be held at any place within the local limits of its jurisdiction.

¹See foot-note 5 on page 704, ante.

²This word "Sambalpur" was inserted by sec. 6 of the Sambalpur Civil Courts Act, 1906 (Ben. Act IV of 1906).

³The words "with the previous sanction of the Governor-General in Council" were omitted by sec. 2 and Schedule I, Part I, of the Devolution Act, 1920 (XXXVIII of 1920).

⁴These words and figures were substituted for the words and figures "sections 4 to 8 (both inclusive), or sections 10 to 12 (both inclusive), or sections 27 to 35 (both inclusive)" by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937, as amended by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937.

[**Act XII of 1887.**]

(*Chapter VII.—Supplemental Provisions.—Sections 37—40.*)

Certain
decisions
not to be
according
to law.

37. (1) Where in any suit or other proceeding it is necessary for a Civil Court to decide any question regarding succession, inheritance, marriage or caste, or any religious usage or institution, the Muhammadan law in cases where the parties are Muhammadans, and the Hindu law in cases where the parties are Hindus, shall form the rule of decision except in so far as such law has, by legislative enactment, been altered or abolished.

(2) In cases not provided for by sub-section (1) or by any other law for the time being in force, the Court shall act according to justice, equity and good conscience.

Judges
not to
try suits
in which
they
are
interested.

38. (1) The presiding officer of a Civil Court shall not try any suit or other proceeding to which he is a party or in which he is personally interested.

(2) The presiding officer of an appellate Civil Court under this Act shall not try an appeal against a decree or order passed by himself in another capacity.

(3) When any such suit, proceeding or appeal as is referred to in sub-section (1) or sub-section (2) comes before any such officer, the officer shall forthwith transmit the record of the case to the Court to which he is immediately subordinate, with a report of the circumstances attending the reference.

(4) The superior Court shall thereupon dispose of the case under '[section 24 of the Code of Civil Procedure, 1908].

Act V of
1908.

(5) Nothing in this section shall be deemed to affect the extraordinary original civil jurisdiction of the High Court.

Subordi-
nation
of Courts
to
District
Court.

39. For the purposes of the last foregoing section the presiding officer of a Court subject to the administrative control of the District Judge shall be deemed to be immediately subordinate to the Court of the District Judge, and, for the purposes of the Code of Civil Procedure '[1908,] the Court of such an officer shall be deemed to be of a grade inferior to that of the Court of the District Judge.

Appli-
cation
of Act to
State
Courts
of Small
Causes.

40. (1) This section and sections 15, 32, 37, 38 and 39 apply to Courts of Small Causes constituted under the Provincial Small Cause Courts Act, 1887. IX of 1887.

(2) Save as provided by that Act, the other sections of this Act do not apply to those Courts.

¹These words and figures were substituted for the words and figures "section 25 of the Code of Civil Procedure" by sec. 8 of the Bengal, Agra and Assam Civil Courts (Bengal Amendment) Act, 1935 (Ben. Act XIX of 1935).

²This figure was inserted by sec. 4 of the Bengal, Agra and Assam Civil Courts (Bengal Amendment) Act, 1935 (Ben. Act XIX of 1935).

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Act. No. I of 1894¹
(The Land Acquisition Act, 1894)²

			Act IX of 1910.
			Act XVII of 1919.
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			Act XVI of 1933.
			Act XXXI of 1962.
AMENDED	Ben. Act V of 1911.
			Ben. Act II of 1934.
			West Ben. Act VII of 1948.
			West Ben. Act XXXIII of 1951.
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[2nd February, 1894.]

An Act to amend the law for the acquisition of land for public purposes and for Companies.

WHEREAS it is expedient to amend the law for the acquisition of land needed for public purposes and for Companies and for determining the amount of compensation to be made on account of such acquisition; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title,
extent and
com-
mence-
ment.

1. (I) This Act may be called the Land Acquisition Act, 1894;

¹For Statement of Objects and Reasons, *see* the Gazette of India, 1892, Pt. V, page 32; for Report of the Select Committee, *see* *ibid*, 1894, Pt. V, page 23; and for Proceedings in Council, *see* *ibid*, 1892, Pt. VI, page 25, and *ibid*, 1894, pages 19, 24 to 42.

This Act has been declared to be in force in—

- (1) Sonthal Paaganas by the Sonthal Parganas Settlement Regulations, 1872 (III of 1872), sec. 3;
- (2) Khondmals District by the Khondmals Laws Regulation, 1936 (IV of 1936), sec. 3 and Sch.; and
- (3) Angul District by the Angul Laws Regulation, 1936 (V of 1936), sec. 3 and Sch.

The Act has also been declared by notification under the Scheduled Districts Act, 1874 (XIV of 1874), to be in force in (I) the Districts of Hazaribagh, Lohardaga (now called the Ranchi District, *see* the *Calcutta Gazette*, of 1899, Pt. I, page 44) and Manbhum, and in Pargana Dhalbhum and the Kolhan in the District of Singhbhum—*see* the Gazette of India, 1894, Pt. I, page 400; and (2) the District of Palamau, *see* the Gazette of India, 1894, Pt. I, page 639.

²The provisions of section 557 of the Calcutta Municipal Act, 1899 (Ben. Act III of 1899), section 475 of the Calcutta Municipal Act, 1923 (Ben. Act III of 1923) and section 524 of the Calcutta Municipal Act, 1951 (West Ben. Act XXXIII of 1951), which have bearing on this Act, may also be seen.

Part I.—Preliminary.—Sections 2, 3.)

(2) It extends to the whole of India except ¹[the territories which, immediately before the 1st November, 1956, were comprised in Part B States]; and

(3) It shall come into force on the first day of March, 1894.

²2. [*Repeal.*—*Repealed partly by the Repealing and Amending Act, 1914 (X of 1914), sec. 3 and Sch. II, and partly by the Repealing Act, 1938 (I of 1938), sec. 2 and Sch.*

Defi-
nitions.

3. In this Act, unless there is something repugnant in the subject or context,—

(a) the expression “land” includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth;

(b) the expression “person interested” includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land ³[or cultivates the land or any portion of it as a *bargadar*];

⁴*Explanation.*—A *bargadar* is a person who under the system generally known as *adhi*, *barga* or *bhag* cultivates the land of another person on condition of delivering a share of the produce of such land to that person;

(c) the expression “Collector” means the Collector of a district, and includes a Deputy Commissioner and any officer especially appointed by the ⁵[appropriate Government] to perform the functions of a Collector under this Act;

¹The words “all the Provinces of India” were first substituted for the words “the whole of British India” by para. 3(2) of the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948. Thereafter the words, “the whole of India except Part B states” were substituted for the words “all the Provinces of India” by para. 4(1) of the Adaptation of Laws Order, 1950, and finally the words “the territories which, immediately before the 1st November, 1956, were comprised in Part B States” were substituted for the words “Part B States” by para. 3 and the Schedule of the Adaptation of Laws (No. 2) Order, 1956.

²So much of section 2 as had not been repealed was repealed by section 3 of, and the Second Schedule to, the West Bengal Repealing and Amending Act, 1948 (West Ben. Act VII of 1948).

³These words were added with retrospective effect by sec. 3(i) of the Land Acquisition (West Bengal Amendment) Act, 1963 (West Ben. Act XXX of 1963).

⁴This *Explanation* was added with retrospective effect by sec. 3(ii), *ibid.*

⁵The words “Provincial Government” were first substituted for the words “Local Government” by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937. Thereafter the words “appropriate Government” were substituted for the words “Provincial Government” by para. 3 and the First Schedule of the Adaptation of Laws Order, 1950.

of 1894.]

Part 1.—Preliminary.—Section 3.)

- (d) the expression "Court" means a principal Civil Court of original jurisdiction, and includes the Court of any Additional Judge, Subordinate Judge or *Munsif* whom the ²[State Government] may appoint, by name or by virtue of his office, to perform, concurrently with any such principal Civil Court, all or any of the functions of the Court under this Act within any specified local limits and, in the case of a *Munsif*, up to the limits of the pecuniary jurisdiction with which he is vested under section 19 of the Bengal, Agra and Assam Civil Courts Act, 1887; XII of 1887.
- (e) the expression "Company" means a Company registered under the ³Indian Companies Act, 1882 or under the (English) Companies Acts, 1862 to 1890, or incorporated by an Act of Parliament [of the United Kingdom] or ⁴[by an Indian Law], or by Royal Charter or Letters Patent [and includes a society registered under the Societies Registration Act, 1860, and a registered society within the meaning of the Co-operative Societies Act, 1912], ⁵[or any other law relating to Co-operative Societies for the time being in force in any State]; VI of 1882. XXI of 1860. II of 1912.

¹Substituted for the original clause (d) by sec. 3 of the Land Acquisition (Bengal Amendment) Act, 1934 (Ben. Act II of 1934).

The original clause is as follows, namely:—

(d) the expression "Court" means a principal Civil Court of original jurisdiction, unless the appropriate Government has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under this Act;

²The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(I) of the Government of India Adaptation of Indian Laws) Order, 1917 and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

³See now the Indian Companies Act, 1956 (I of 1956).

⁴Inserted by para. 3 and the First Schedule of the Adaptation of Laws Order, 1950.

⁵Substituted for the words "of the Governor General in Council" by para. 3 and the First Schedule of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁶Inserted by sec. 2 of the Land Acquisition (Amendment) Act, 1919 (XVII of 1919).

⁷Added by sec. 2 of the Land Acquisition (Amendment) Act, 1962 (XXXI of 1962).

⁸For the purpose of acquisition of land for the Board of Trustees for the improvement of Calcutta under the Calcutta Improvement Act, 1911 (Ben. Act V of 1911), after clause (e) the following shall be deemed to be inserted, namely:—

"(eI) the expression 'local authority' includes the Board of Trustees constituted under the Calcutta Improvement Act, 1911: "

Vide section 71 of, and paragraph 1 of the Schedule to, that Act.

⁹For the purpose of acquisition of land for the Board of Trustees for the improvement of Howrah under the Howrah Improvement Act, 1956 (West Ben. Act XIV of 1956), after clause (e) the following clause shall be deemed to be inserted, namely:—

"(eI) the expression 'local authority' includes the Board of Trustees constituted under the Howrah Improvement Act, 1956; "

Vide section 70 of, and paragraph 1 of the Schedule to, that Act.

[Act I

(Part 1.—Preliminary.—Section 3.)

"[(ee) the expression "appropriate Government" means, in relation to acquisition of land for the purposes of the Union, the Central Government, and, in relation to acquisition of land for any other purposes, the State Government;]

(f) the expression "public purpose" includes the provision of village-sites in districts in which the "[appropriate Government] shall have declared by notification in the *Official Gazette* that it is customary for the Government to make such provision; and

(g) the following persons shall be deemed persons "entitled to act" as and to the extent hereinafter provided (that is to say)—

trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any such case, and that to the same extent as the persons beneficially interested could have acted if free from disability:

a married woman, in cases to which the English law is applicable, shall be deemed the person so entitled to act, and whether of full age or not, to the same extent as if she were unmarried and of full age; and

the guardians of minors and the committees or managers of lunatics or idiots shall be deemed respectively the persons so entitled to act, to the same extent as the minors, lunatics, or idiots themselves, if free from disability, could have acted:

Provided that—

(i) no person shall be deemed "entitled to act" whose interest in the subject-matter shall be shown to the satisfaction of the Collector or Court to be adverse to the interest of the person interested for whom he would otherwise be entitled to act;

(ii) in every such case the person interested may appear by a next friend or, in default of his appearance by a next friend, the Collector or Court, as the case may be, shall appoint a guardian for the case to act on his behalf in the conduct thereof;

(iii) the provisions of Chapter XXXI of the ³Code of Civil Procedure shall, *mutatis mutandis*, apply in the case of persons interested appearing before a Collector or Court by a next friend, or by a guardian for the case, in proceedings under this Act; and

XIV of 1882.

¹Inserted by para. 3 and the First Schedule of the Adaptation of Laws Order, 1950.

²See foot-note 5 on page 718, *ante*.

³See now the Code of Civil Procedure, 1908 (Act V of 1908), Sch. I, Order XXXII.

of 1894.]

(Part II.—Acquisition.—Section 4.)

- (iv) no person “entitled to act” shall be competent to receive the compensation-money payable to the person for whom he is entitled to act unless he would have been competent to alienate the land and receive and give a good discharge for the purchase-money on a voluntary sale.

PART II.

ACQUISITION.

Preliminary Investigation.

14. (1) Whenever it appears to the [appropriate Government] that land in any locality [is needed or] is likely to be needed for any public purpose, a notification to that effect shall be published in the Official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

Publication of preliminary notification, and powers of officers thereupon.

(2) Thereupon it shall be lawful for any officer, either generally or specially authorised by such Government in this behalf, and for his servants and workmen,—

to enter upon and survey and take levels of any land in such locality;

to dig or bore into the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches: and

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

¹As to the amendments with which this section should be read when land is required for the purposes of a Company, see sec. 38(2), *infra*. A protected monument may be acquired under this Act as if its preservation were a “public purpose” within the meaning of the Act, see sec. 10 of the Ancient Monuments Preservation Act, 1904 (VII of 1904).

²See foot-note 5 on page 718, *ante*.

³Inserted by sec. 2 of the Land Acquisition (Amendment) Act, 1923 (XXXVIII of 1923).

(Part II.—Acquisition.—Sections 5—6.)

Payment
for
damage.

5. The officer so authorised shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector or other chief revenue-officer of the district, and such decision shall be final.

¹[Objections.]

Hearing of
objec-
tions.

¹[5A. (1) Any person interested in any land which has been notified under section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a Company may, within thirty days after the issue of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard either in person or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, submit the case for the decision of the ²[appropriate Government] together with the record of the proceedings held by him and a report containing his recommendations on the objections. The decision of the ²[appropriate Government] on the objections shall be final.

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.]

Declaration of intended Acquisition.

Declara-
tion that
land is re-
quired for
a public
purpose.

6. (1) Subject to the provisions of Part VII of this Act, ²[when the ²(appropriate Government) is satisfied, after considering the report, if any, made under section 5A, sub-section (2),] that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders:

¹This section with its heading was inserted by sec. 3 of the Land Acquisition (Amendment) Act, 1923 (XXXVIII of 1923).

²See foot-note 5 on page 718, *ante*.

³Subs. by sec. 4 of the Land Acquisition (Amendment) Act, 1923 (XXXVIII of 1923) for "whenever it appears to the Local Government"

of 1894.]

(Part II.—Acquisition.—Section 6.)

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

(2) The declaration shall be published in the Official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and, after making such declaration, the [appropriate Government] may acquire the land in manner hereinafter appearing.

*** *** *** *** *** ***

¹See foot-note 5 on page 718, *ante*.

²For the purpose of acquisition of land for the Board of Trustees for the improvement of Calcutta under the Calcutta Improvement Act, 1911 (Ben. Act V of 1911), after section 6, the following section shall be deemed to be inserted, namely:—

“6A. *Publication of notification, hearing of objections and declaration under the Calcutta Improvement Act to be substituted for those under section 4, 5A and 6.*—When acquisition is proposed to be made of land comprised within any improvement scheme framed by the Board and published under section 49 of the Calcutta Improvement Act, 1911 (Ben. Act V of 1911)—

- (i) the publication of a notice of the improvement scheme under sub-section (2) of section 43 of the Calcutta Improvement Act, 1911, shall be substituted for and have the same effect as publication of a notification in the *Official Gazette* and giving public notice of the substance of such notification in the locality under section 4;
- (ii) proceedings under section 45 and sub-section (1) of section 47 of the Calcutta Improvement Act, 1911, shall be substituted for and have the same effect as proceedings under section 5A;
- (iii) the publication of a notification under section 49 of the Calcutta Improvement Act, 1911, shall be substituted for and have the same effect as a declaration under section 6.”

Vide section 71 of, and paragraph 1A of the Schedule to, that Act.

³For the purpose of acquisition of land for the Board of Trustees for the improvement of Howrah under the Howrah Improvement Act, 1956 (West Ben. Act XIV of 1956), after section 6, the following section shall be deemed to be inserted, namely:—

“6A. *Publication of notification, hearing of objections and declaration under the Howrah Improvement Act, 1956, to be substituted for those under sections 4, 5A and 6.*—When acquisition is proposed to be made of land comprised within any improvement scheme framed by the Board and published under section 51 of the Howrah Improvement Act, 1956—

- (i) the publication of a notice of the improvement scheme under sub-section (2) of section 45 of the Howrah Improvement Act, 1956, shall be substituted for and have the same effect as publication of a notification in the *Official Gazette* and giving public notice of the substance of such notification in the locality under section 4;
- (ii) proceedings under section 47 and sub-section (1) of section 49 of the Howrah Improvement Act, 1956, shall be substituted for and have the same effect as proceedings under section 5A;
- (iii) the publication of a notification under section 51 of the Howrah Improvement Act, 1956, shall be substituted for and have the same effect as a declaration under section 6.”

Vide section 70 of, and paragraph 2 of the Schedule to, that Act.

[Act I

(Part II.—Acquisition.—Sections 7–11.)

After declaration, Collector to take order for acquisition.

Land to be marked out, measured and planned. Notice to persons interested.

7. Whenever any land shall have been so declared to be needed for a public purpose or for a Company, the '[appropriate Government]', or some officer authorised by the '[appropriate Government]' in this behalf, shall direct the Collector to take order for the acquisition of the land.

8. The Collector shall thereupon cause the land (unless it has been already marked out under section 4) to be marked out. He shall also cause it to be measured, and if no plan has been made thereof, a plan to be made of the same.

9. (1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue-district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and registered under Part III of the 'Indian Post Office Act, 1866.

XIV of 1866.

Power to require and enforce the making of statements as to names and interests.

10. (1) The Collector may also require any such person to make or deliver to him, at a time and place mentioned (such time not being earlier than fifteen days after the date of the requisition), a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of the statement.

(2) Every person required to make or deliver a statement under this section or section 9 shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code.

Enquiry into Measurements, Value and Claims, and Award by the Collector.

XLV of 1860.

Enquiry and award by Collector.

11. On the day so fixed, or on any other day to which the

²See foot-note 5 on page 718, ante.

³See now the Indian Post Office Act, 1898 (VI of 1898).

of 1894.]

(Part II.—Acquisition.—Sections 12–14.)

enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land [at the date of the publication of the notification under section 4, sub-section (1)], and into the respective interests of the persons claiming the compensation and shall make an award under his hand of—

- (i) the true area of the land;
- (ii) the compensation which in his opinion should be allowed for the land; and
- (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

12. (1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested.

Award of Collector when to be final.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

13. The Collector may, for any cause he thinks fit, from time to time adjourn the enquiry to a day to be fixed by him.

Adjournment of enquiry.

14. For the purpose of enquiries under this Act the Collector shall have power to summon and enforce the attendance of witnesses, including the parties interested or any of them, and to compel the production of documents by the same means, and (so far as may be) in the same manner, as is provided in the case of a Civil Court under the Code of Civil Procedure.

Power to summon and enforce attendance of witnesses and production of documents.

¹Inserted by sec. 5 of the Land Acquisition (Amendment) Act, 1923 (XXXVIII of 1923).

²For the purpose of acquisition of land for the Board of Trustees for the improvement of Calcutta under the Calcutta Improvement Act, 1911 (Ben. Act V of 1911, before the words "make an award under his hand" the words "after considering such evidence as may be adduced by the Board under sub-section (2) of section 50" shall be deemed to be inserted, *vide* section 71 of, and paragraph 1B of the Schedule to, that Act.

³For the purpose of acquisition of land for the Board of Trustees for the improvement of Howrah under the Howrah Improvement Act, 1956 (West Ben. Act XIV of 1956), before the words "make an award under his hand" the words "after considering such evidence as may be adduced by the Board under sub-section (2) of section 50" shall be deemed to be inserted, *vide* section 70 of, and paragraph 3 of the Schedule to, that Act.

³See now the Code of Civil Procedure, 1908 (V of 1908).

(Part II.—Acquisition.—Sections 15—17.)

Matters to be considered and neglected.

15. In determining the amount of compensation, the Collector shall be guided by the provisions contained in sections 23¹[and 24].

Taking Possession.

Power to take possession.

16. When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon²[vest absolutely in the Government], free from all encumbrances.

Special powers in cases of urgency.

³17. (1) In cases of urgency, whenever the '[appropriate Government] so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), take possession of any waste or arable land needed for public purposes or for a Company. Such land shall thereupon²[vest absolutely in the Government], free from all encumbrances.

(2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station, the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the '[appropriate Government] enter upon and take possession of such land, which shall thereupon²[vest absolutely in the Government] free from all encumbrances:

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

¹For the purpose of acquisition of land for the Board of Trustees for the improvement of Calcutta under the Calcutta Improvement Act, 1911 (Ben. Act V of 1911), for the word and figures "and 24" the figures, word and letter "24 and 24A" shall be deemed to be substituted, *vide* section 71 of, and paragraph 3 of the Schedule to, that Act.

¹For the purpose of acquisition of land for the Board of Trustees for the improvement of Howrah under the Howrah Improvement Act, 1956 (West Ben. Act XIV of 1956), for the word and figures "and 24" the figures, word and letter "24 and 24A" shall be deemed to be substituted, *vide* section 70 of, and paragraph 4 of the Schedule to, that Act.

²The words "vest absolutely in the Crown" were first substituted for the words "vest absolutely in the Government" by para. 3 and the First Schedule of the Government of India (Adaptation of Indian Laws) Order, 1937. Thereafter the word "Government" was substituted for the word "Crown" by para. 4(1) of the Adaptation of Laws Order, 1950.

³Section 557 (b) of the Calcutta Municipal Act, 1899 (Ben. Act III of 1899), which has a bearing on section 17, may also be seen.

⁴See foot-note 5 on page 718, *ante*.

of 1894.]

(Part II.—Acquisition.—Section 17.)

(3) In every case under either of the preceding sub-sections the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in section 24¹; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

²[(4) In the case of any land to which, in the opinion of the ³[appropriate Government], the provisions of sub-section (1) or sub-section (2) are applicable, the ³[appropriate Government] may direct that the provisions of section 5A shall not apply, and, if it does so direct, a declaration may be made under section 6 in respect of the land at any time after the publication of the notification under section 4, sub-section (1)].

¹For the purpose of acquisition of land for the Board of Trustees for the improvement of Calcutta under the Calcutta Improvement Act, 1911 (Ben. Act V of 1911), after the figures "24" the words, figures and letter "or section 24A" shall be deemed to be inserted, *vide* section 71 of, and paragraph 4(1) of the Schedule to, that Act.

¹For the purpose of acquisition of land for the Board of Trustees for the improvement of Howrah under the Howrah Improvement Act, 1956 (West Ben. Act XIV of 1956), after the figures "24" the words, figures and letter "or section 24A" shall be deemed to be inserted, *vide* section 70 of, and paragraph 5(1) of the Schedule to, that Act.

²Added by sec. 6 of the land Acquisition (Amendment) Act, 1923 (XXXVIII of 1923).

³See foot-note 5 on page 718, *ante*.

⁴For the purpose of acquisition of land for the Board of Trustees for the improvement of Calcutta under the Calcutta Improvement Act, 1911 (Ben. Act V of 1911),—

(a) to section 17 the following sub-sections shall be deemed to be added, namely:—

"(4) Sub-sections (1) and (3) shall apply also in the case of any area which is stated in a certificate granted by a salaried Presidency Magistrate or a Magistrate of the first class to be unhealthy.

(5) Before granting any such certificate, the Magistrate shall cause notice to be served as promptly as may be on the persons referred to in sub-section (3) of section 9, and shall hear without any avoidable delay any objections which may be urged by them.

(6) When proceedings have been taken under this section for the acquisition of any land, and any person sustains damage in consequence of being suddenly dispossessed of such land, compensation shall be paid to such person for such dispossession."

Vide section 71 of, and paragraph 4(2) of the Schedule to, that Act; and

(b) after section 17 the following section shall be deemed to be inserted, namely:—

(Foot-note 4 concluded next page)

(Part III.—Reference to Court and Procedure thereon.—
Section 18.)

PART III.

*Reference to Court and Procedure thereon.*Reference
to Court.

18. (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made,—

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

(Foot-note 4 continued from previous page concluded)

17A. *Transfer of land to Board.*—In every case referred to in section 16 or section 17, the Collector shall, upon payment of the cost of acquisition, make over charge of the land to the Board; and the land shall thereupon vest in the Board, subject to the liability of the Board to pay any further costs which may be incurred on account of its acquisition."

Vide section 71 of, and paragraph 5 of the Schedule to, that Act. *For the purpose of acquisition of land for the Board of Trustees for the improvement of Howrah under the Howrah Improvement Act, 1956 (West Ben. Act XIV of 1956).—

(a) to section 17 the following sub-sections shall be deemed to be added, namely:—

"(5) Sub-sections (1) and (3) shall apply also in the case of any area which is stated in a certificate granted by a salaried Magistrate of the first class to be unhealthy.

(6) Before granting any such certificate, the Magistrate shall cause notice to be served as promptly as may be on the persons referred to in sub-section (3) of section 9, and shall hear without any avoidable delay any objections which may be urged by them.

(7) When proceedings have been taken under this section for the acquisition of any land, and any person sustains damage in consequence of being suddenly dispossessed of such land, compensation shall be paid to such person for such dispossession."

Vide section 70 of, and paragraph 5(2) of the Schedule to, that Act; and

(b) after section 17 the following section shall be deemed to be inserted, namely:—

"17A. *Transfer of land to Board.*—In every case referred to in section 16 or section 17, the Collector shall, upon payment of the cost of acquisition, make over charge of the land to the Board; and the land shall thereupon vest in the Board, subject to the liability of the Board to pay any further costs which may be incurred on account of its acquisition."

Vide section 70 of, and paragraph 6 of the Schedule to, that Act.

of 1894.]

(Part III.—Reference to Court and Procedure thereon.—
Sections 19—23.)

19. (1) In making the reference, the Collector shall state for the information of the Court, in writing under his hand,—
- (a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon;
 - (b) the names of the persons whom he has reason to think interested in such land;
 - (c) the amount awarded for damages and paid or tendered under sections 5 and 17, or either of them, and the amount of compensation awarded under section 11; and
 - (d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.
- (2) To the said statement shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by, the parties interested respectively.
20. The Court shall thereupon cause a notice specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons, namely:—
- (a) the applicant;
 - (b) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded; and
 - (c) if the objection is in regard to the area of the land or to the amount of the compensation, the Collector.
21. The scope of the enquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection.
22. Every such proceeding shall take place in open Court, and all persons entitled to practise in any Civil Court in the State shall be entitled to appear, plead and act (as the case may be) in such proceeding.
23. (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration—
- ¹first, the market-value of the land at the date of the publication of the ²[notification under section 4, sub-section (1)];
 - ³secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;
 - ⁴thirdly, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

Collector's statement to the Court.

Service of notice.

Restriction on scope of proceedings.

Proceedings to be in open Court.

Matters to be considered in determining compensation.

¹Substituted for the word "Province" by para. 4(1) of the Adaptation of Laws Order, 1950.

²For the purpose of acquisition of land under the Calcutta Municipal Act, 1951 (West Ben. Act XXXIII of 1951), clause first shall be deemed to be amended as provided for in section 523 of that Act.

³Subs. by sec. 7 of the Land Acquisition (Amendment) Act, 1923 (XXXVIII of 1923) for the words "declaration relating thereto under section 6".

(Part III.—Reference to Court and Procedure thereon.—
Section 23.)

fourthly, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change: ¹* * * *

sixthly, the damage (if any) *bonafide* resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking ²[possession of the land; and]

³*seventhly*, the loss of earning, if any, caused to the person interested, in consequence of the acquisition of the land, where earning was derived directly from such land.

⁴(2) In addition to the market-value of the land as above provided, the Court shall in every case award a sum of fifteen per centum on such market-value, in consideration of the compulsory nature of the acquisition.

⁵(3) * * * *

¹The word "and" was omitted with retrospective effect by sec. 4(1) (i) of the Land Acquisition (West Bengal Amendment) Act, 1963 (West Ben. Act XXX of 1963).

²These words were substituted with retrospective effect for the words "possession of the land." by sec. 4(1) (ii), *ibid*.

³Clause *seventhly* was added with retrospective effect by sec 4(1) (iii), *ibid*.

⁴For the purpose of acquisition of land for the Board of Trustees for the improvement of Calcutta under the Calcutta Improvement Act, 1911 (Ben. Act V of 1911), sub-section (2) of section 23 shall be deemed to be omitted, *vide* section 71 of, and paragraph 9 (1) of the Schedule to, that Act.

⁵For the purpose of acquisition of land for the Board of Trustees for the improvement of Howrah under the Howrah Improvement Act, 1956 (West Ben. Act XIV of 1956), sub-section (2) of section 23 shall be deemed to be omitted, *vide* section 70 of, and paragraph 7(1) of the Schedule to, that Act.

⁶For the purpose of acquisition of land for the Board of Trustees for the improvement of Calcutta under the Calcutta Improvement Act, 1911 (Ben. Act V of 1911), at the end of section 23 the following sub-section shall be deemed to be added, namely:—

⁷(3) For the purposes of clause *first* of sub-section (1) of this section.—

(a) when acquisition is proposed to be made by the Board of land comprised within any improvement scheme framed by the Board and published under section 49 of the Calcutta Improvement Act, 1911 (Ben. Act V of 1911), the market-value of the land shall be deemed to be the market-value according to the disposition of the land at the date of publication of the notice under sub-section (2) of section 43 of the said Act; and in other cases, the market-value shall be deemed to be the market-value according to the disposition of the land at the date of publication of the notification relating thereto under section 4:

(bb) if the market-value has been increased or decreased owing to the land falling within or near to the alignment of a projected public street, so much of the increase or decrease as may be due to such cause shall be disregarded;

(Foot-note 5 continued next page)

of 1894.]

(Part III.—Reference to Court and Procedure thereon.—
Section 23.)

⁶(3)

* * * * *

(Foot-note 5 starting from page 730, continued)

- (bbb) if any person, without the permission of the Chairman required by section 63, sub-section (8), of the Calcutta Improvement Act, 1911, has erected, re-erected or added to any wall (exceeding ten feet in height) or building within the street alignment or building line of a projected public street or having erected, re-erected or added to any wall or building as aforesaid with such permission fails to remove such wall or building or any specified portion thereof when so required by notice issued under sub-section (9) of the said section, then any increase in the market-value resulting from such erection, re-erection or addition shall be disregarded;
- (c) if the market-value has been increased by means of any improvement made by the owner or his predecessor in interest within two years before the date with reference to which the market-value is to be determined such increase shall be disregarded, unless it be proved that the improvement was made *bona fide* and not in contemplation of proceedings for the acquisition of the land being taken under this Act;
- (d) if the market-value is specially high in consequence of the land being put to a use which is unlawful or contrary to public policy, that use shall be disregarded, and the market-value shall be deemed to be the market-value of the land if put to ordinary uses; and
- (e) if the market-value of any building is specially high in consequence of the building being so overcrowded as to be dangerous to the health of the inmates, such overcrowding shall be disregarded, and the market-value shall be deemed to be the market-value of the building if occupied by such number of persons only as could be accommodated in it without risk of danger from overcrowding."

Vide section 71 of, and paragraph 9(2) of the Schedule to, that Act.

⁵For the purpose of acquisition of land for the Board of Trustees for the improvement of Howrah under the Howrah Improvement Act, 1956 (West Ben. Act XIV of 1956), at the end of section 23, the following sub-section shall be deemed to be added, namely:—

"(3) For the purposes of clause *first* of sub-section (1) of this section,—

- (a) when acquisition is proposed to be made by the Board of land comprised within any improvement scheme framed by the Board and published under section 51 of the Howrah Improvement Act, 1956, the market-value of the land shall be deemed to be the market-value according to the disposition of the land at the date of publication of the notice under sub-section (2) of section 45 of the said Act; and in other cases, the market-value shall be deemed to be the date of publication of the notification relating thereto under section 4;
- (b) if the market-value has been increased or decreased owing to the land falling within or near to the alignment of a projected public street, so much of the increase or decrease as may be due to such cause shall be disregarded;
- (c) if any person, without the permission of the Chairman required by sub-section (8) of section 63 of the Howrah Improvement Act, 1956, has erected, re-erected or added to any wall (exceeding ten feet in height), or building within the street alignment or building line of a projected public street or a projected public park, or having erected, re-erected or added to any wall or building as aforesaid with such permission fails to remove such wall or building or any specified portion thereof when so required by notice, issued under sub-section

(Foot-note 5 starting from page 730 concluded next page)

(Part III.—Reference to Court and Procedure thereon.—
Section 24.)

'(4) Compensation payable to a *bargadar* for loss of earning under clause *seventhy* of sub-section (1) shall not exceed three times the net average annual income which was derived or might be derived from the land during three years immediately preceding the date of acquisition.

Explanation.—The net annual income of a *bargadar* in any year shall be taken to be fifty per cent. of the total produce of the land cultivated by him in that year.

24. But the Court shall not take into consideration—

Matters to be neglected in determining compensation.

first, the degree of urgency which has led to the acquisition;
secondly, any disinclination of the person interested to part with the land acquired;

thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit;

fourthly, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration under section 6, by or in consequence of the use to which it will be put;

fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired;

sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put; or

(Foot-note 5 starting from page 730, concluded)

(9) of the said section, then any increase in the market-value resulting from such erection, re-erection or addition shall be disregarded;

(d) if any person erects, re-erects or adds to any wall (exceeding ten feet in height), or building within a projected sewage disposal site or having erected, re-erected or added to any wall or building as aforesaid fails to remove such wall or building or any specified portion thereof when so required by a notice issued by the Board, then any increase in the market-value resulting from such erection, re-erection or addition shall be disregarded;

(e) if the market-value has been increased by means of any improvement made by the owner or his predecessor-in-interest within two years before the date with reference to which the market-value is to be determined, such increase shall be disregarded, unless it be proved that the improvement was made *bona fide* and not in contemplation of proceedings for the acquisition of the land being taken under this Act;

(f) if the market-value is specially high in consequence of the land being put to a use which is unlawful or contrary to public policy, that use shall be disregarded, and the market-value shall be deemed to be the market-value of the land if put to ordinary uses; and

(g) if the market-value of any building is specially high in consequence of the building being so overcrowded as to be dangerous to the health of the inmates, such overcrowding shall be disregarded, and the market-value shall be deemed to be the market-value of the building if occupied by such number of persons only as could be accommodated in it without risk of danger from overcrowding."

Vide section 70 of, and paragraph 7(2) of the Schedule to, that Act.

'Sub-section (4) was added with retrospective effect by sec. 4(2) of the Land Acquisition (West Bengal Amendment) Act, 1963 (West Ben. Act XXX of 1963).

of 1894.]

(Part III.—Reference to Court and Procedure thereon.—
Section 24.)

¹*seventhly*, any outlay of improvements on, or disposal of, the land acquired, commenced, made or effected without the sanction of the Collector after the date of the publication of the "[notification under section 4, sub-section (1)].

¹For the purpose of acquisition of land for the Board of Trustees for the improvement of Calcutta under the Calcutta Improvement Act, 1911 (Ben. Act V of 1911), for clause *seventhly* of section 24 the following clause shall be deemed to be substituted, namely:—

"*seventhly*, any outlay on additions or improvements to land acquired, which was incurred after the date with reference to which the market-value is to be determined, unless such additions or improvements were necessary for the maintenance of any building in a proper state of repair."

Vide section 71 of, and paragraph 10 of the Schedule to, that Act.

¹For the purpose of acquisition of land for the Board of Trustees for the improvement of Howrah under the Howrah Improvement Act, 1956 (West Ben. Act XIV of 1956), for clause *seventhly* of section 24, the following clause shall be deemed to be substituted, namely:—

"*seventhly*, any outlay on additions or improvements to land acquired, which was incurred after the date with reference to which the market-value is to be determined, unless such additions or improvements were necessary for the maintenance of any building in a proper state of repair."

Vide section 70 of, and paragraph 8 of the Schedule to, that Act.

²Subs. by sec. 8 of the Land Acquisition (Amendment) Act, 1923 (XXXVIII of 1923) for the words "declaration under section 6."

³For the purpose of acquisition of land for the Board of Trustees for the improvement of Calcutta under the Calcutta Improvement Act, 1911 (Ben. Act V of 1911), after section 24 the following section shall be deemed to be inserted, namely:—

"24A. *Further provisions for determining compensations.*—In determining the amount of compensation to be awarded for any land acquired for the Board under this Act, the Tribunal shall also have regard to the following provisions, namely:—

- (1) when any interest in any land acquired under this Act has been acquired after the date with reference to which the market-value is to be determined, no separate estimate of the value of such interest shall be made so as to increase the amount of compensation to be paid for such land;
- (2) if, in the opinion of the Tribunal, any building is in a defective state, from a sanitary point of view, or is not in a reasonably good state of repair, the amount of compensation shall not exceed the sum which the Tribunal considers the building would be worth if it were put into a sanitary condition or into a reasonably good state of repair, as the case may be, *minus* the estimated cost of putting it into such condition or state;
- (3) if, in the opinion of the Tribunal, any building, which is used or is intended or is likely to be used for human habitation, is not reasonably capable of being made fit for human habitation, the amount of compensation shall not exceed the value of the materials of the building, *minus* the cost of demolishing the building;
- (4) if any tank in any area comprised within a scheme framed by the Board and published under section 49 of the Calcutta Improvement Act, 1911, is, on account of accumulation of filth, rubbish or putrid matter or of the percolation of foul water from the kitchen, court-yard, privy or urinal, or for any other cause, in an unhygienic condition or contains water which is discoloured or malodorous or unfit for use for domestic purposes, or is a source of nuisance or disease, then notwithstanding anything contained in any law for the

(Foot-note 3 continued next page)

(Part III.—Reference to Court and Procedure thereon.—
Section 25.)

Rules as to
amount of
compen-
sation.

25. (1) When the applicant has made a claim to compensation, pursuant to any notice given under section 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under section 11.

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector.

(Foot-note 3 starting from page 733, continued)

time being in force, the Tribunal shall, in determining the amount of compensation, make such deduction from the market-value of the tank according to its present disposition as will, in their opinion, be a reasonable set-off against the cost to society in unhealthiness, disease and discomfort caused by the tank being kept in such an unhygienic or insanitary condition."

Vide section 71 of, and paragraph 11 of the Schedule to, that Act.

For the purpose of acquisition of land for the Board of Trustees for the improvement of Howrah under the Howrah Improvement Act, 1956 (West Ben. Act XIV of 1956), after section 24 the following section shall be deemed to be inserted, namely:—

"24A. Further provisions for determining compensation.—In determining the amount of compensation to be awarded for any land acquired for the Board under this Act, the Tribunal shall also have regard to the following provisions, namely:—

(1) when any interest in any land acquired under this Act has been acquired after the date with reference to which the market-value is to be determined, no separate estimate of the value of such interest shall be made so as to increase the amount of compensation to be paid for such land;

(2) if, in the opinion of the Tribunal, any building is in a defective state, from a sanitary point of view, or is not in a reasonably good state of repair, the amount of compensation shall not exceed the sum which the Tribunal considers the building would be worth if it were put into a sanitary condition or into a reasonably good state of repair, as the case may be, minus the estimated cost of putting it into such condition or state;

(3) if, in the opinion of the Tribunal, any building, which is used or is intended or is likely to be used for human habitation, is not reasonably capable of being made fit for human habitation, the amount of compensation shall not exceed the value of the materials of the building, minus the cost of demolishing the building;

(4) if any tank in any area comprised within a scheme framed by the Board and published under section 51 of the Howrah Improvement Act, 1956, is, on account of accumulation of filth, rubbish or putrid matter or of the percolation of foul water from the kitchen, courtyard, privy or urinal, or for any other cause, in an unhygienic condition or contains water which is discoloured or malodorous or unfit for use for domestic purposes, or is a source of nuisance or disease, then notwithstanding anything contained in any law for the time being in force, the Tribunal shall, in determining the amount of compensation, make such deduction from the

(Foot-note 3 starting from page 733, concluded next page)

of 1894.]

(Part III.—Reference to Court and Procedure thereon.— Sections 26—28.—Part IV.—Apportionment of Compensation.— Section 29.)

26. ¹[(1)] Every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded under clause first of sub-section (1) of section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

Form of awards.

¹(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2. clause (2), and section 2, clause (9), respectively, of the Code of Civil Procedure, 1908.

V of 1908.

27. (1) Every such award shall also state the amount of costs incurred in the proceedings under this Part, and by what persons and in what proportions they are to be paid.

Costs.

²(2) When the award of the Collector is not upheld, the costs shall ordinarily be paid by the Collector, unless the Court shall be of opinion that the claim of the applicant was so extravagant or that he was so negligent in putting his case before the Collector that some deduction from his costs should be made or that he should pay a part of the Collector's costs.

28. If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of six per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court.

Collector may be directed to pay interest on excess compensation.

PART IV.

APPORTIONMENT OF COMPENSATION.

29. Where there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be conclusive evidence of the correctness of the apportionment.

Particulars of apportionment to be specified.

(Foot-note 3 starting from page 733. concluded)

market-value of the tank according to its present disposition as will, in their opinion, be a reasonable set-off against the cost to society in unhealthiness, disease and discomfort caused by the tank being kept in such an unhygienic or insanitary condition."

¹Vide section 70 of, and paragraph 9 of the Schedule to, that Act.

¹Section 26 was renumbered sec. 26(1), and sub-section (2) was added by sec. 2 of the Land Acquisition (Amendment) Act, 1921 (XIX of 1921).

²For the purpose of acquisition of land for the Board of Trustees for the improvement of Calcutta under the Calcutta Improvement Act, 1911 (Ben. Act V of 1911), sub-section (2) of section 27 shall be deemed to be omitted, vide section 71 of, and paragraph 12A of the Schedule to, that Act.

²For the purpose of acquisition of land for the Board of Trustees for the improvement of Howrah under the Howrah Improvement Act, 1956 (West Ben. Act XIV of 1956), sub-section (2) of section 27 shall be deemed to be omitted, vide section 70 of, and paragraph 10 of the Schedule to, that Act.

(Part IV.—Apportionment of Compensation.—Section 30.—

Part V.—Payment.—Sections 31, 32.)

Dispute
as to
apportion-
ment.

30. When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court.

PART V.

PAYMENT.

Payment
of compen-
sation or
deposit of
same in
Court.

31. (1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section the Collector may, with the sanction of the [appropriate Government] instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land-revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.

(4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.

32. (1) If any money shall be deposited in Court under sub-section (2) of the last preceding section and it appears that the land in respect whereof the same was awarded belonged to any person who had no power to alienate the same, the Court shall—

(a) order the money to be invested in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money shall have been deposited was held, or

Investment
of money
deposited
in respect
of lands
belonging
to persons
incom-
petent to
alienate.

¹See foot-note 5 on page 718, ante.

²As to persons who are competent to contract, see sec. 11 of the Indian Contract Act, 1872 (IX of 1872).

(Foot-note 5 starting from page 730 concluded next page)

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After section 32, insert the following section, namely:—

"Compensation awarded to minors and lunatics to be paid."

32A. If, according to an award made by the Collector under this Act, the person interested entitled to any compensation or costs awarded (hereafter in this section referred to as the payee) is a minor or a lunatic, then, notwithstanding anything to the contrary in this Act or in any other law, the Collector shall have the power to pay the amount of such compensation or costs before it is deposited in the Court under sub-section (2) of section 31 or it may be paid by the Court after it is so deposited but before it is invested under section 32,—

(a) where the payee is a minor, to the guardian of the minor, and

4 of 1912.

(b) where the payee is a lunatic, to the manager of the estate of the lunatic appointed under the Indian Lunacy Act, 1912:

Provided that except in the case of the following classes of guardians, that is to say,

(i) a natural guardian,

(ii) a guardian appointed by the will of a minor's father or mother,

(iii) a guardian appointed or declared by a Court, and

(iv) a person empowered to act as or exercise the powers of a guardian by or under any enactment relating to court of wards,

no payment as aforesaid shall be made unless the guardian furnishes security in accordance with prescribed rules."

(Inserted by West Ben. Act XXIV of 1964, section 3.)

Page 737—

In section 33, for the words "the last preceding section", paid
substitute the word and figures "section 32". l, the Payment
(Substituted by West Ben. Act XXIV of 1964, section 4.) of so of interest.
osited.

[No. 1, dated the 1st January, 1969.]

35. (1) Subject to the provisions of Part VII of this Act, whenever it appears to the [appropriate Government] that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a Company, the [appropriate Government] may direct the Collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding three years from the commencement of such occupation.

(2) The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof

Temporary occupation of waste or arable land.

Procedure when difference as to compensation arises.

¹See foot-note 5 on page 718, ante.

[Act I

(Part VI.—Temporary Occupation of Land.—Sections 36, 37.—
Part VII.—Acquisition of Land for Companies.—
Sections 38, 38A.)

for such term as aforesaid, and for the materials (if any) to be taken therefrom, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payments as shall be agreed upon in writing between him and such persons respectively.

(3) In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Court.

Power to enter and take possession, and compensation on restoration.

36. (1) On payment of such compensation, or on executing such agreement or on making a reference under section 35, the Collector may enter upon and take possession of the land, and use or permit the use thereof in accordance with the terms of the said notice.

(2) On the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein:

Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the [appropriate Government] shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a Company.

Difference as to condition of land.

37. In case the Collector and persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the Collector shall refer such difference to the decision of the Court.

PART VII.

ACQUISITION OF LAND FOR COMPANIES.

Company may be authorised to enter and survey.

38. (1) * * * The [appropriate Government] may authorise any officer of any Company desiring to acquire land for its purposes to exercise the powers conferred by section 4.

(2) In every such case section 4 shall be construed as if for the words "for such purpose" the words "for the purposes of the Company" were substituted; and section 5 shall be construed as if after the words "the officer" the words "of the Company" were inserted.

Industrial concern to be deemed Company for certain purposes.

[38A. An industrial concern, ordinarily employing not less than one hundred workmen owned by an individual or by an association of individuals and not being a Company, desiring to acquire land for the erection of dwelling houses for workmen employed by the concern or for the provision of amenities directly connected therewith shall, so far as concerns the acquisition of such land, be deemed to be a Company for the purposes of this Part, and the references to Company in sections

¹See foot-note 5 on page 718, ante.

²The words "Subject to such rules as the Governor General of India in Council may from time to time prescribe in this behalf" were repealed by sec. 2 and Schedule I of the Devolution Act, 1920 (XXV of 1920).

³Inserted by sec. 6 of the Land Acquisition (Amendment) Act, 1933 (XVI of 1933).

of 1894.]

(Part VII.—Acquisition of Land for Companies.—Sections 39—41.)

5A, 6, 7, 17 and 50 shall be interpreted as references also to such concern.]

39. The provisions of sections 6 to 37 (both inclusive) shall not be put in force in order to acquire land for any Company, unless with the previous consent of the '[appropriate Government], nor unless the Company shall have executed the agreement hereinafter mentioned.

Previous consent of appropriate Government and execution of agreement necessary.

40. (1) Such consent shall not be given unless the '[appropriate Government] be satisfied, '[either on the report of the Collector under section 5A, sub-section (2), or] by an enquiry held as hereinafter provided:—

Previous enquiry.

'(a) that the purpose of the acquisition is to obtain land for the erection of dwelling houses for workmen employed by the Company or for the provision of amenities directly connected therewith, or

'(aa) that such acquisition is needed for the construction of some building or work for a Company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose, or

(b) that such acquisition is needed for the construction of some work, and that such work is likely to prove useful to the public.]

(2) Such enquiry shall be held by such officer and at such time and place as the '[appropriate Government] shall appoint.

(3) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the 'Code of Civil Procedure in the case of a Civil Court.

41. * * * If the '[appropriate Government] is satisfied '[after considering the report, if any, of the Collector under section 5A, sub-section (2), or on the report of the officer making an inquiry under section 40] that '[the proposed acquisition is,

Agreement with appropriate Government.

¹See foot-note 5 on page 718, *ante*.

²Inserted by sec. 9 of the Land Acquisition (Amendment) Act, 1923 (XXXVIII of 1923).

³Substituted for the original clauses (a) and (b) by sec. 3 of the Land Acquisition (Amendment) Act, 1933 (XVI of 1933).

⁴Inserted by sec. 3 of the Land Acquisition (Amendment) Act, 1962 (XXXI of 1962).

⁵See now the Code of Civil Procedure, 1908 (V of 1908).

⁶The words "Such officer shall report to the Local Government the result of the enquiry, and," were omitted by sec. 10 of the Land Acquisition (Amendment) Act, 1923 (XXXVIII of 1923).

⁷Inserted by sec. 10, *ibid*.

⁸Substituted for the words "the purpose of the proposed acquisition is to obtain land for the erection of dwelling houses for workmen employed by the Company or for the provision of amenities directly connected therewith, or that the proposed acquisition is needed for the construction of a work, and that such work is likely to prove useful to the public" by sec. 4(a) of the Land Acquisition (Amendment) Act, 1962 (XXXI of 1962).

[Act I]

(Part VII.—Acquisition of Land for Companies.—Section 42.)

for any of the purposes referred to in clause (a) or clause (aa) or clause (b) or sub-section (1) of section 40], it shall * * * require the Company to enter into an agreement [with the appropriate Government] providing to the satisfaction of the [appropriate Government] for the following matters, namely:—

- (1) the [payment to the appropriate Government] of the cost of the acquisition;
- (2) the transfer, on such payment, of the land to the Company;
- (3) the terms on which the land shall be held by the Company;
- ⁵[(4) where the acquisition is for the purpose of erecting dwelling houses or the provision of amenities connected therewith, the time within which, the conditions on which and the manner in which the dwelling houses or amenities shall be erected or provided; * * *
- ⁶(4A) where the acquisition is for the construction of any building or work for a Company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose, the time within which, and the conditions on which, the building or work shall be constructed or executed; and
- (5) where the acquisition is for the construction of any other work, the time within which and the conditions on which the work shall be executed and maintained, and the terms on which the public shall be entitled to use the work.]

Publication
of
agreement.

42. Every such agreement shall, as soon as may be after its execution, be published * * * in the [Official Gazette] and shall thereupon (so far as regards the terms on which the public shall be entitled to use the work) have the same effect as if it had formed part of this Act.

²The words "subject to such rules as the Governor General of India in Council may from time to time prescribe in this behalf" were repealed by sec. 2 and Schedule I of the Devolution Act, 1920 (XXXVIII of 1920).

³The words "with the Provincial Government" were first substituted for the words "with the Secretary of State for India in Council" by para 3 and the First Schedule of the Government of India (Adaptation of Indian Laws) Order, 1937. Thereafter the words "appropriate Government" were substituted for the words "Provincial Government" by para. 3 and the First Schedule of the Adaptation of Laws Order, 1950.

⁴See foot-note 5 on page 718, *ante*.

⁵The words "payment to the Provincial Government" were first substituted for the words "payment to Government". Thereafter the words "appropriate Government" were substituted for the words "Provincial Government" by para. 3 and the First Schedule of the Adaptation of Laws Order, 1950.

⁶These clauses (4) and (5) excluding clause (4A) were substituted for the original clauses (4) and (5) by sec. 4 of the Land Acquisition (Amendment) Act, 1933 (XVI of 1933).

⁷The word "and" at the end of clause (4) was omitted and after that clause, clause 4(A) was inserted by sec. 4(b) of the Land Acquisition (Amendment) Act, 1962 (XXXI of 1962).

⁸The words "in the Gazette of India and also" were omitted by para. 3 and the First Schedule of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁹Substituted for the words "local official Gazette" by para. 4(1), *ibid*.

of 1894.]

(Part VII.—Acquisition of Land for Companies.—Sections 43—44B—Part VIII.—Miscellaneous.—Section 45.)

of 1870. 43. The provisions of sections 39 to 42, both inclusive, shall not apply and the corresponding sections of the 'Land Acquisition Act, 1870, shall be deemed never to have applied, to the acquisition of land for any Railway or other Company, for the purposes of which,²[under any agreement with such Company, the Secretary of State for India in Council, the Secretary of State, the Central Government or any State Government is or was bound to provide land].

Sections 39 to 42 not to apply where Government bound by agreement to provide land for Companies. How agreement with Railway Company may be proved, Restriction on transfer, etc.

44. In the case of the acquisition of land for the purposes of a Railway Company, the existence of such an agreement as is mentioned in section 43 may be proved by the production of a printed copy thereof purporting to be printed by order of Government.

³44A. No Company for which any land is acquired under this Part shall be entitled to transfer the said land or any part thereof by sale, mortgage, gift, lease or otherwise except with the previous sanction of the appropriate Government.

³44B. Notwithstanding anything contained in this Act, no land shall be acquired under this Part, except for the purpose mentioned in clause (a) of sub-section (1) of section 40, for a private company which is not a Government company.

Land not to be acquired under this Part except for certain purpose for private companies other than Government companies. Service of notices.

Explanation.—'Private company' and 'Government company' shall have the meanings respectively assigned to them in the Companies Act, 1956.

of 1956.

PART VIII. MISCELLANEOUS.

45. (1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under section 4, by the officer therein mentioned, and, in the case of any other notice, by or by order of the Collector or the Judge.

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him;

¹Repealed by this Act.

²The words "under any agreement between such Company and the Secretary of State for India in Council, the Government is, or was, bound to provide land" were omitted and the words "under any agreement with such Company, the Secretary of State for India in Council, the Secretary of State, or any Government in British India is or was bound to provide land" were inserted by para. 3 and the First Schedule of the Government of India (Adaptation of Indian Laws) Order, 1937. Thereafter "the Central Government or any Provincial Government" were substituted for the words "or any Government in British India" by para. 3 and the Schedule of the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948; and the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Law Order, 1950.

³Secs. 44A and 44B were inserted by sec. 5 of the Land Acquisition (Amendment) Act, 1962 (XXXI of 1962).

[Act I

(Part VIII.—Miscellaneous.—Sections 46—48.)

and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in the court-house, and also in some conspicuous part of the land to be acquired:

Provided that, if the Collector or Judge shall so direct, a notice may be sent by post, in a letter addressed to the person named therein at his last known residence, address or place of business and registered under Part III of the 'Indian Post Office Act, 1866, and service of it may be proved by the production of the addressee's receipt. XIV of 1866.

Penalty for obstructing acquisition of land.

46. Whoever wilfully obstructs any person in doing any of the acts authorised by section 4 or section 8, or wilfully fills up, destroys, damages or displaces any trench or mark made under section 4, shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding one month, or to fine not exceeding fifty rupees, or to both.

Magistrate to enforce surrender.

47. If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender of the land to himself, and, if not a Magistrate, he shall apply to a Magistrate or (within the towns of Calcutta, Madras and Bombay) to the Commissioner of Police, and such Magistrate or Commissioner (as the case may be) shall enforce the surrender of the land to the Collector.

Completion of acquisition not compulsory, but compensation to be awarded when not completed.

48. (1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

¹See now the Indian Post Office Act, 1898 (VI of 1898).

of 1894.]

(Part VIII.—Miscellaneous.—Section 49.)

49. ¹(1) The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desire that the whole of such house, manufactory or building shall be so acquired: Acquisition of part of house or building.

¹For the purpose of acquisition of land for the Board of Trustees for the improvement of Calcutta under the Calcutta Improvement Act, 1911 (Ben. Act V of 1911), after section 48 the following sections shall be deemed to be inserted, namely:—

"48A. *Compensation to be awarded when land not acquired within two years.*—(1) If, within a period of two years from the date of the issue of the public notice under sub-section (1) of section 9, in respect of any land, the Collector has not made an award under section 11 with respect to such land, the owner of the land shall be entitled to receive compensation for the damage suffered by him in consequence of the delay.

(2) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

48B. *Sections 48 and 48B not to apply in certain cases.*—No compensation shall be payable in pursuance of section 48 or section 48A when proceedings for the acquisition of land have been abandoned on the execution of an agreement, or the acceptance of a payment, in pursuance of sub-section (4) of section 78 of the Calcutta Improvement Act, 1911 (Ben. Act V of 1911)."

Vide section 71 of, and paragraph 13 of the Schedule to, that Act.

¹For the purpose of acquisition of land for the Board of Trustees for the improvement of Howrah under the Howrah Improvement Act, 1956 (West Ben. Act XIV of 1956), after section 48 the following sections shall be deemed to be inserted, namely:—

"48A. *Compensation to be awarded when land not acquired within two years.*—(1) If, within a period of two years from the date of the issue of the public notice under sub-section (1) of section 9, in respect of any land, the Collector has not made an award under section 11 with respect to such land, the owner of the land shall be entitled to receive compensation for the damage suffered by him in consequence of the delay.

(2) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

48B. *Sections 48 and 48A not to apply in certain cases.*—No compensation shall be payable in pursuance of section 48 or section 48A when proceedings for the acquisition of land have been abandoned on the execution of an agreement, or the acceptance of a payment, in pursuance of sub-section (4) of section 79 of the Howrah Improvement Act, 1956."

Vide section 70 of, and paragraph 11 of the Schedule to, that Act.

²For the purpose of acquisition of land for the Board of Trustees for the improvement of Calcutta under the Calcutta Improvement Act, 1911 (Ben. Act V of 1911), for sub-section (1) of section 49, the following sub-section shall be deemed to be substituted, namely:—

"(1) The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building if the acquisition of the part will render the full and unimpaired use of the remaining portion of the house, manufactory or building impracticable:

Provided that if any question shall arise as to whether the part proposed to be acquired will render the full and unimpaired use of the remaining portion of the house, manufactory or building impracticable, the Collector shall refer the determination of such question to the Court and shall not take possession of such part until after the question has been determined.

(Foot-note 2 concluded next page)

[Act I

(Part VIII.—Miscellaneous.—Section 49.)

Provided that the owner may, at any time before the Collector has made his award under section 11, by notice in writing, withdraw or modify his expressed desire that the whole of such house, manufactory or building shall be so acquired:

Provided also that, if any question shall arise as to whether any land proposed to be taken under this Act does or does not form part of a house, manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the Court and shall not take possession of such land until after the question has been determined.

In deciding on such a reference the Court shall have regard to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory or building.

(2) If, in the case of any claim under section 23, sub-section (1), *thirdly*, by a person interested, on account of the severing of the land to be acquired from his other land, the '[appropriate Government]' is of opinion that the claim is unreasonable or excessive, it may, at any time before the Collector has made his award, order the acquisition of the whole of the land of which the land first sought to be acquired forms a part.

(3) In the case last herebefore provided for, no fresh declaration or other proceedings under sections 6 to 10, both inclusive, shall be necessary; but the Collector shall without delay furnish a copy of the order of the '[appropriate Government]' to the person interested, and shall thereafter proceed to make his award under section 11.

(Foot-note 2 from the previous page concluded)

In deciding on such a reference the Court shall have regard only to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the remaining portion of the house, manufactory or building."

Vide section 71 of, and paragraph 14 of the Schedule to, that Act. ²For the purpose of acquisition of land for the Board of Trustees for the improvement of Howrah under the Howrah Improvement Act, 1956 (West Ben. Act XIV of 1956), for sub-section (1) of section 49, the following sub-section shall be deemed to be substituted, namely:—

"(1) The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building if the acquisition of the part will render the full and unimpaired use of the remaining portion of the house, manufactory or building impracticable:

Provided that if any question shall arise as to whether the part proposed to be acquired will render the full and unimpaired use of the remaining portion of the house, manufactory or building impracticable, the Collector shall refer the determination of such question to the Court and shall not take possession of such part until after the question has been determined.

In deciding on such a reference the Court shall have regard only to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the remaining portion of the house, manufactory or building."

Vide section 70 of, and paragraph 12 of the Schedule to, that Act.

¹See foot-note 5 on page 718, *ante*.

of 1894.]

(Part VIII.—Miscellaneous.—Sections 50—54.)

50. (1) Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of any Company, the charges of and incidental to such acquisition shall be defrayed from or by such fund or Company.

Acquisition of land at cost of a local authority or Company.

(2) In any proceeding held before a Collector or Court in such cases the local authority or Company concerned may appear and adduce evidence for the purpose of determining the amount of compensation:

Provided that no such local authority or Company shall be entitled to demand a reference under section 18.

51. No award or agreement made under this Act shall be chargeable with stamp-duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

Exemption from stamp duty and fees.

52. No suit or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after tender of sufficient amends.

Notice in case of suits for anything done in pursuance of Act.

XIV of 1882. 53. Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure shall apply to all proceedings before the Court under this Act.

Code of Civil Procedure to apply to proceedings before Court.

of 1908. ²[54. Subject to the provisions of the Code of Civil Procedure, 1908, applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any part of the award, of the Court and from any decree of the High Court passed on such appeal as aforesaid an appeal shall lie to ³[the Supreme Court] subject to the provisions contained in section 110 of the Code of Civil Procedure, 1908, and in Order XLV thereof.]

Appeals in proceedings before Court.

¹See now the Code of Civil Procedure, 1908 (V of 1908).

²Substituted for the original section by sec. 3 of the Land Acquisition (Amendment) Act, 1921 (XIX of 1921).

³Substituted for "His Majesty in Council" by para. 3 and the First Schedule of the Adaptation of Laws Order, 1950.

[Act I of 1894.]*(Part VIII.—Miscellaneous.—Section 55.)*

Power to
make
rules.

55. (1) The [appropriate Government] shall * * * have power to make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement, and may from time to time alter and add to the rules so made:

‘Provided that the power to make rules for carrying out the purposes of Part VII of this Act shall be exercisable by the Central Government and such rules may be made for the guidance of the State Governments and the officers of the Central Government and of the State Governments:

‘Provided further that every such rule made by the Central Government shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or two or more successive sessions, and if, before the expiry of the session in which it is so laid or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(2) The power to make, alter and add to rules under subsection (1) shall be subject to the condition of the rules being made, altered or added to after previous publication.

(3) All such rules, alterations and additions shall * * * be published in the Official Gazette, and shall thereupon have the force of law.

¹See foot-note 5 on page 718, *ante*.

²The words “subject to the control of the Governor General in Council” were repealed by sec. 2 and Schedule I of the Devolution Act, 1920 (XXXVIII of 1920).

³The original proviso was repealed by para. 3 and the First Schedule of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These provisos were added by sec. 6 of the Land Acquisition (Amendment) Act, 1962 (XXXI of 1962).

⁵The words “when sanctioned by the Governor General in Council” were repealed by sec. 2 and Schedule, Part I, of the Decentralization Act 1914 (IV of 1914).

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13. Instruments stamped with impressed stamps how to be written.
14. Only one instrument to be on same stamp.
15. Instrument written contrary to section 13 or 14 deemed unstamped.
16. Denoting duty.

C.—Of the time of stamping Instruments.

17. Instruments executed in India.
18. Instruments other than bills, and notes executed out of India.
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22. Effect of statement of rate of exchange or average price.
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E.—Duty by whom payable.

- 29.** Duties by whom payable.
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- 33.** Examination and impounding of instruments.
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- 35.** Instruments not duly stamped inadmissible in evidence, etc.
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- 39.** Collector's power to refund penalty paid under section 38, sub-section (I).
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- 49.** Allowance for spoiled stamps.
- 50.** Application for relief under section 49 when to be made.
- 51.** Allowance in case of printed forms no longer required by Corporations.
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SECTIONS.

- 53. Allowance for spoiled or misused stamps how to be made.
- 54. Allowance for stamps not required for use.
- 54A. Allowances for stamps in denominations of annas.
- 55. Allowance on renewal of certain debentures.

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- 56. Control of, and statement of case to, Chief Controlling Revenue-authority.
- 57. Statement of case by Chief Controlling Revenue-authority to High Court.
- 58. Power of High Court to call for further particulars as to case stated.
- 59. Procedure in disposing of case stated.
- 60. Statement of case by other Courts to High Courts.
- 61. Revision of certain decisions of Courts regarding the sufficiency of stamps.

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- 62. Penalty for executing, etc., instrument not duly stamped.
- 63. Penalty for failure to cancel adhesive stamp.
- 64. Penalty for omission to comply with provisions of section 27.
- 65. Penalty for refusal to give receipt, and for devices to evade duty on receipts.
- 66. Penalty for not making out policy, or making one not duly stamped.
- 67. Penalty for not drawing full number of bills or marine policies purporting to be in sets.
- 68. Penalty for post-dating bills, and for other devices to defraud the revenue.
- 69. Penalty for breach of rule relating to sale of stamps and for unauthorised sale.
- 70. Institution and conduct of prosecutions.
- 71. Jurisdiction of Magistrates.
- 72. Place of trial.

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- 73. Books, etc., to be open to inspection.
- 74. Powers to make rules relating to sale of stamps.
- 75. Power to make rules generally to carry out Act.
- 76. Publication of rules.
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- 77. Saving as to court-fees.
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- 79. (*Repealed.*)

SCHEDULE I.—Stamp-duty on Instruments.

SCHEDULE IA.—Stamp-duty on certain instruments under the Bengal Stamp (Amendment) Act, 1922, or the Indian Stamp (Bengal Amendment) Act, 1935.

SCHEDULE II.—(*Repealed.*)

Act II of 1899.
(The Indian Stamp Act, 1899.)¹

AMENDED ...

REPEALED IN PART AND AMENDED

ADAPTED ...

Act XV of 1904.
Act VI of 1910.
Act I of 1912.
Act XIII of 1916.
Act XVIII of 1919.
Act XI of 1923.
Act XLIII of 1923.
Act XIII of 1924.
Act XV of 1925.
Act XXXII of 1925.
Act XXXVIII of 1926.
Act V of 1927.
Act X of 1927.
Act XVIII of 1928.
Act VIII of 1930.
Act XIV of 1932.
Act XXXV of 1934.
Act VIII of 1935.
Act XV of 1936.
Act LXXII of 1952.
Act XLIII of 1955.
Act LXXVI of 1956.
Act XIX of 1958.
Act XIV of 1961.
Act XI of 1963.
Ben. Act III of 1922.
Ben. Act XII of 1935.
Ben. Act VII of 1939.
West Ben. Act X of 1962.
West Ben. Act XXX of 1962.
West Ben. Act XVII of 1964.

Act V of 1906.
Act IV of 1914.
Act X of 1914.

- (a) The Government of India
(Adaptation of Indian Laws)
Order, 1937.
- (b) The Indian (Adaptation of
Existing Indian Laws) Order,
1947.
- (c) The Indian Independence
(Adaptation of Central Acts
and Ordinances) Order, 1948.
- (d) The Indian Independence
(Adaptation of Bengal and
Punjab Acts) Order, 1948.
- (e) The Adaptation of Laws
Order, 1950.
- (f) The Andhra (Adaptation of
Laws on Union Subjects)
Order, 1954.
- (g) The Adaptation of Laws
(No. 2) Order, 1956.

(27th January, 1899.)

An Act to consolidate and amend the law relating to Stamps.
WHEREAS it is expedient to consolidate and amend the law
relating to Stamps; It is hereby enacted as follows:—

CHAPTER I.
PRELIMINARY.

1. (1) This Act may be called the Indian Stamp Act, 1899.

¹For Statement of Objects and Reasons, see the "Gazette of India", 1897, Pt. V, page 175; for Report of the Select Committee, see *ibid.*, 1898, Pt. V, page 231; and for Proceedings in Council, see *ibid.*, 1889, Pt. VI, pages 10 and 278; and *ibid.*, 1899, Pt. VI, page 3.

Short
title,
extent
and
commen-
cement.

(Chapter I.—Preliminary.—Section 2.)

¹(2) It extends to the whole of India except the State of Jammu and Kashmir:

Provided that it shall not apply to "[the territories which, immediately before the 1st November, 1956, were comprised in Part B States (excluding the State of Jammu and Kashmir) except to the extent to which the provisions of this Act relate to rates of stamp duty in respect of the documents specified in entry 91 of List I in the Seventh Schedule to the Constitution.

(3) It shall come into force on the first day of July, 1899.

Definitions.

2. In this Act, unless there is something repugnant in the subject or context,—

"Banker".

(1) "banker" includes a bank and any person acting as a banker:

"Bill of exchange".

(2) "bill of exchange" means a bill of exchange as defined by the Negotiable Instruments Act, 1881, and includes also a hundi, and any other document entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money: 26 of 1881

"Bill of exchange payable on demand".

(3) "bill of exchange payable on demand" includes—

(a) an order for the payment of any sum of money by a bill of exchange or promissory note, or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money, or for the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen;

(b) an order for the payment of any sum of money weekly, monthly, or at any other stated period; and

(c) a letter of credit, that is to say, any instrument by which one person authorises another to give credit to the person in whose favour it is drawn:

"Bill of lading".

(4) "bill of lading" includes a "through bill of lading", but does not include a mate's receipt:

"Bondo"

(5) "bondo" includes—

(a) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;

(b) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and

¹Sub-section (2) was substituted for the original sub-section (2) by para. 3 and the 1st Schedule to the Adaptation of Laws Order, 1950. Thereafter, this sub-section was again substituted by this fresh sub-section by sec. 3 of the Indian Stamp (Amendment) Act, 1955 (XLIH of 1955), with effect from the 1st April, 1956.

²Substituted for the words "Part B States" by para. 3 and the Schedule to the Adaptation of Laws (No. 2) Order, 1956.

of 1899.]

(Chapter I.—Preliminary.—Section 2.)

(c) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another:

"Chargeable".

(6) "chargeable" means, as applied to an instrument executed or first executed after the commencement of this Act, chargeable under this Act, and, as applied to any other instrument, chargeable under the law in force in [India] when such instrument was executed or, where several persons executed the instrument at different times, first executed:

"Cheque".

(7) "cheque" means a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand:

* * *

(9) "Collector"—

"Collector".

(a) means, within the limits of the towns of Calcutta, Madras and Bombay, the Collector of Calcutta, Madras and Bombay, respectively, and, without those limits, the Collector of a district; and

(b) includes a Deputy Commissioner and any officer whom [the State Government] may, by notification in the *Official Gazette*, appoint in this behalf:

"Conveyance".

(10) "conveyance" includes a conveyance on sale and every instrument by which property, whether moveable or immoveable, is transferred *inter vivos* and which is not otherwise specifically provided for by Schedule I [or by Schedule IA, as the case may be]:

"Duly stamped".

(11) "duly stamped," as applied to an instrument, means that the instrument bears an adhesive or impressed stamp of not less than the proper amount, and that such stamp has been affixed or used in accordance with the law for the time being in force in [India]:

(12) "executed" and "execution," used with reference to instruments, mean "signed" and "signature":

"Executed" and "execution".

(12a) [Omitted by the 1st Schedule of the Adaptation of Laws Order, 1950.]

(13) "impressed stamp" includes—

"Impressed Stamp".

(a) labels affixed and impressed by the proper officer, and
(b) stamps embossed or engraved on stamped paper:

¹The words "the Provinces" were substituted for the original words "British India" by paragraph 3(2) of the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948. Thereafter the word "States", was substituted for the word "Provinces" by paragraph 4(1) of the Adaptation of Laws Order, 1950, and finally the word "India" was substituted for the words "the States" by sec. 2 of the Indian Stamp (Amendment) Act, 1955 (XLIII of 1955), with effect from the 1st April, 1956.

²Clause (8) (definition of "Chief Controlling Revenue-authority") was omitted by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

³The words "the collecting Government" were substituted for the words "the Local Government" by para. 3 and the First Schedule of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words were added by sec. 3 of the Bengal Stamp (Amendment) Act, 1922 (Ben. Act III of 1922).

(Chapter I.—Preliminary.—Section 2.)

"India".	¹ (13A) "India" means the territory of India excluding the State of Jammu and Kashmir:
"Instrument".	(14) "instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded:
"Instrument of partition".	(15) "instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any Revenue-authority or any Civil Court and an award by an arbitrator directing a partition:
"Lease".	(16) "lease" means a lease of immoveable property and includes also— (a) a patta; (b) a kabuliyat or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy or pay or deliver rent for, immoveable property; (c) any instrument by which tolls of any description are let; (d) any writing on an application for a lease intended to signify that the application is granted:
"Marketable security".	² (16a) "marketable security" means a security of such a description as to be capable of being sold in any stock market in [India] or in the United Kingdom:
"Mortgage-deed".	(17) "mortgage-deed" includes every instrument whereby, for the purpose of securing money advanced, or to be advanced, by way of loan, or an existing or future debt, or the performance of an engagement, one person transfers, or creates, to, or in favour of, another, a right over or in respect of specified property:
"Paper".	(18) "paper" includes vellum, parchment or any other material on which an instrument may be written:
"Policy of insurance".	(19) "policy of insurance" includes— (a) any instrument by which one person, in consideration of a premium, engages to indemnify another against loss, damage or liability arising from an unknown or contingent event; (b) a life-policy, and any policy insuring any person against accident or sickness, and any other personal insurance: * * * * *
"Policy of group insurance".	³ (19A) "policy of group insurance" means any instrument covering not less than fifty or such smaller number as the Central Government may approve, either generally or with reference to any particular case, by which an insurer, in consideration of a premium paid by an employer or by an employer and his employees jointly, engages to cover, with or without medical examination and for the sole benefit of persons other than the employer, the lives of all the employees or of any class of them,

¹Clause (13A) was inserted by sec. 4(a) of the Indian Stamp (Amendment) Act, 1955 (XLIII of 1955), with effect from the 1st April, 1956.

²Clause (16a) was added by sec. 2 of the Indian Stamp (Amendment) Act, 1904 (XV of 1904).

³See foot-note 1 on page 753, *ante*.

⁴Sub-clause (c) and the word "and" prefixed thereto which were repealed by sec. 2 of the Indian Stamp (Amendment) Act, 1906 (V of 1906), are omitted.

⁵Clause (19a) was inserted by sec. 4(b) of the Indian Stamp (Amendment) Act, 1955 (XLIII of 1955), with effect from the 1st April, 1956.

of 1899.]

(Chapter I.—Preliminary.—Section 2.)

determined by conditions pertaining to the employment, for amounts of insurance based upon a plan which precludes individual selection:

(20) "policy of sea-insurance" or "sea-policy"—

"Policy of sea-insurance" or "sea-policy".

(a) means any insurance made upon any ship or vessel (whether for marine or inland navigation), or upon the machinery, tackle or furniture of any ship or vessel, or upon any goods, merchandise or property of any description whatever on board of any ship or vessel, or upon the freight of, or any other interest which may be lawfully insured in, or relating to, any ship or vessel; and

(b) includes any insurance of goods, merchandise or property for any transit which includes, not only a sea risk within the meaning of clause (a), but also any other risk incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance:

Where any person, in consideration of any sum of money paid or to be paid for additional freight or otherwise, agrees to take upon himself any risk attending goods, merchandise or property of any description whatever while on board of any ship or vessel, or engages to indemnify the owner of any such goods, merchandise or property from any risk, loss or damage, such agreement or engagement shall be deemed to be a contract for sea-insurance:

(21) "power of attorney" includes any instrument (not chargeable with a fee under the law relating to court-fees for the time being in force) empowering a specified person to act for and in the name of the person executing it:

"Power of attorney".

XXVI of 1881. (22) "promissory note" means a promissory note as defined by the Negotiable Instruments Act, 1881;

"Promissory note".

it also includes a note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen:

(23) "receipt" includes any note, memorandum or writing—

"Receipt".

(a) whereby any money, or any bill of exchange, cheque or promissory note is acknowledged to have been received, or

(b) whereby any other moveable property is acknowledged to have been received in satisfaction of a debt, or

(c) whereby any debt or demand, or any part of a debt or demand, is acknowledged to have been satisfied or discharged, or

(d) which signifies or imports any such acknowledgment, and whether the same is or is not signed with the name of any person: ^{1*}

(24) "settlement" means any non-testamentary disposition, in writing, of moveable or immoveable property made—

"Settlement".

(a) in consideration of marriage,

¹The word "and" was omitted by sec. 2 and Schedule I of the Repealing and Amending Act, 1928 (XVIII of 1928).

[Act II

(Chapter I.—Preliminary.—Chapter II.—Stamp-duties.—
Section 3.)

(b) for the purpose of distributing property of the settler among his family or those for whom he desires to provide, or for the purpose of providing for some person dependent on him, or

(c) for any religious or charitable purpose; and includes an agreement in writing to make such a disposition [and, where any such disposition has not been made in writing, any instrument recording, whether by way of declaration of trust or otherwise, the terms of any such disposition]:**

"Soldier".

[(25) "Soldier" includes any person below the rank of non-commissioned officer who is enrolled under the Indian Army Act, 1911'.]

CHAPTER II.

STAMP-DUTIES.

A.—Of the Liability of Instruments to Duty.

Instru-
ments
charge-
able with
duty.

3. Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefor, respectively, that is to say—

(2) In the Indian Stamp Act, 1899, after section 3A, the following section shall be inserted, namely:—

"3AA. (1) Every instrument chargeable with duty under the first proviso to section 3, read with Schedule IA, shall, in addition to such duty, be chargeable with a duty of ten paise.

(2) The additional duty with which any instrument is chargeable under sub-section (1) shall be paid and such payment shall be indicated on such instrument by means of adhesive stamp bearing the inscription "refugee relief", whether with or without any other design, picture or inscription.

(3) Except as otherwise provided in sub-section (2), the provisions of this Act shall, so far as may be, apply in relation to the additional duties chargeable under sub-section (1) in respect of the instruments referred to therein as they apply in relation to the duty chargeable under the first proviso to section 3 in respect of those instruments."

Instru-
ments
chargeable
with addi-
tional
duty.

which, not
person, is
ay of July,

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ade out of
d or paid,
endorsed,
ndia]; and
*,** or pro-
which, not

np (Amend-

chedule I of
was omitted
Order, 1950.
inserted by
1928 (XVIII

*Clause (26), which was added by para. 3 and the 1st Schedule of the Adaptation of Laws Order, 1950, was omitted by sec. 4(c) of the Indian Stamp (Amendment) Act, 1955 (XLIII of 1955), with effect from the 1st April, 1956.

**See foot-note 1 on page 753, ante.

*These words were inserted by sec. 5 of the Indian Finance Act, 1927 (V of 1927).

*The word "cheque" was omitted by sec. 5, *ibid.*

of 1899.]

(Chapter II.—Stamp-duties.—Section 3.)

having been previously executed by any person, is executed out of ¹[India] on or after that day, relates to any property situate, or to any matter or thing done or to be done, in ¹[India] and is received in ¹[India]:

²Provided that, except as otherwise expressly provided in this Act, and notwithstanding anything contained in clauses (a), (b), or (c) of this section or in Schedule I, the amount indicated in Schedule IA to this Act shall, subject to the exemptions contained in that Schedule, be the duty chargeable under this Act on the following instruments, mentioned in clauses (aa) and (bb) of this proviso, as the proper duty therefor respectively,—

- (aa) every instrument, mentioned in Schedule IA as chargeable with duty under that Schedule, which, not having been previously executed by any person, is executed in ³[West Bengal] on or after the first day of April, 1922; and
- (bb) every instrument mentioned in Schedule IA as chargeable with duty under that Schedule, which, not having been previously executed by any person, is executed out of ³[West Bengal] on or after the first day of April, 1922, and relates to any property situated, or to any matter or thing done or to be done, in ³[West Bengal] and is received in ³[West Bengal]:

Provided ⁴[also] that no duty shall be chargeable in respect of—

- (1) any instrument executed by, or on behalf of, or in favour of, the ⁵[Government] in cases where, but for this exemption, the ⁵[Government] would be liable to pay the duty chargeable in respect of such instrument;
- (2) any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Merchant Shipping Act, 1894, or under Act XIX of 1838, or the Indian Registration of Ships Act, 1841, as amended by subsequent Acts.

57 & 58
Vict., c-60.
X of 1841.

¹See foot-note 1 on page 753, *ante*.

²This proviso was inserted by sec. 4(1) of the Bengal Stamp (Amendment) Act, 1922 (Ben. Act III of 1922).

³Substituted for the word "Bengal" by para. 4(2) of the Indian (Adaptation of Existing Indian Laws) Order, 1947.

⁴This word was inserted by sec. 4(2) of the Bengal Stamp (Amendment) Act, 1922 (Ben. Act III of 1922).

⁵The word "Crown" was substituted for the word "Government" by para. 3 and the 1st Schedule of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

(Chapter II.—Stamp-duties.—Sections 4—6.)

Several instruments used in single transaction of sale, mortgage or settlement.

4. (1) Where, in the case of any sale, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule I ¹[or in Schedule IA, as the case may be] for the conveyance, mortgage or settlement, and each of the other instruments shall be chargeable with a duty of one rupee ²[if the principal instrument be chargeable with the duty prescribed in Schedule I, or with a duty of ³[two rupees], if the principal instrument be chargeable with the duty prescribed in Schedule IA, instead of the duty (if any) prescribed for such other instrument in Schedule I or Schedule IA, as the case may be.]

(2) The parties may determine for themselves which of the instruments so employed shall, for the purposes of sub-section (1), be deemed to be the principal instrument:

Provided that the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments, employed.

Instruments relating to several distinct matters.

5. Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.

Instruments coming within several descriptions in Schedule I or in Schedule IA.

6. Subject to the provisions of the last preceding section, an instrument so framed as to come within two or more of the descriptions in Schedule I ⁴[or in Schedule IA, as the case may be], shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties:

Provided that nothing in this Act contained shall render chargeable with duty exceeding ⁵[two rupees] a counterpart or duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid ⁵[unless it falls within the provisions of section 6A.]

¹These words were inserted by sec. 5(a) of the Bengal Stamp (Amendment) Act, 1922 (Ben. Act III of 1922).

²These words were substituted for the words "instead of the duty (if any) prescribed for it in that Schedule" by sec. 5(b), *ibid.*

³These words were substituted for the words "one rupee eight annas" as previously amended by sec. 6(2) of the Bengal Stamp (Amendment) Act 1922 (Ben. Act III of 1922), by sec. 4 of the Indian Stamp (Bengal Amendment) Act, 1935 (Ben. Act XII of 1935).

⁴These words were inserted by sec. 6(1) of the Bengal Stamp (Amendment) Act, 1922 (Ben. Act III of 1922).

⁵These words were added by sec. 6(2), *ibid.*

of 1899.]

(Chapter II.—Stamp-duties.—Sections 6A, 7.)

Ben. Act
I of 1922,
and Act XII
1935.

¹6A. (1) Notwithstanding anything contained in sections 4 or 6 or in any other law unless it is proved that the duty chargeable under the Bengal Stamp (Amendment) Act, 1922, [or the Indian Stamp (Bengal Amendment) Act, 1935] has been paid—

(a) on the principal or original instrument as the case may be, or

(b) in accordance with the provisions of this section,

the duty chargeable on an instrument of sale, mortgage or settlement other than a principal instrument or on a counterpart, duplicate or copy of any instrument shall, if the principal or original instrument would, when received in ²[West Bengal], have been chargeable under the Bengal Stamp (Amendment) Act, 1922 ³[or the Indian Stamp (Bengal Amendment) Act, 1935] with a higher rate of duty, be the duty with which the principal or original instrument would have been chargeable under section 19A.

(2) Notwithstanding anything contained in any law, no instrument, counterpart, duplicate or copy chargeable with duty under this section shall be received in evidence as properly stamped unless the duty chargeable under this section has been paid thereon:

Provided that a Court before which any such instrument, counterpart, duplicate, or copy is produced, may, in its discretion, permit the duty chargeable under this section to be paid thereon, and may then receive it in evidence.

7. (1) “* * * * *

(2) “* * * * *

(3) “* * * * *

(4) Where any sea-insurance is made for or upon a voyage and also for time, or to extend to or cover any time beyond thirty days after the ship shall have arrived at her destination and been there moored at anchor, the policy shall be charged with duty as a policy for or upon a voyage, and also with duty as a policy for time.

Payment
of West
Bengal
Stamp
duty on
copies,
counter-
parts
or dupli-
cates
when
that
duty
has not
been
paid on
the
principal
or
original
instru-
ment.

Policies
of sea-
insurance.

¹Section 6A was added by sec 7 of the Bengal Stamp (Amendment) Act, 1922 (Ben. Act III of 1922).

²These words were inserted by sec. 5 of the Indian Stamp (Bengal Amendment) Act, 1935 (Ben. Act XII of 1935).

³Substituted for the word “Bengal” by para. 4(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

⁴Sub-sections (1), (2) and (3) of sec. 7 were repealed by sec. 92 of the Marine Insurance Act, 1963 (11 of 1963).

[Act II

(Chapter II.—Stamp-duties.—Sections 8, 9.)

Bonds,
debentures
or other
securities
issued on
loans
under
Act XI,
1879.

8. (1) Notwithstanding anything in this Act, any local authority raising a loan under the provisions of the Local Authorities Loan Act, 1879, or of any other law for the time being in force, by the issue of bonds, debentures or other securities, shall, in respect of such loan, be chargeable with a duty of ^{XI of 1879.} [one per centum] on the total amount of the bonds, debentures or other securities issued by it, and such bonds, debentures or other securities need not be stamped, and shall not be chargeable with any further duty on renewal, consolidation, sub-division or otherwise.

(2) The provisions of sub-section (1) exempting certain bonds, debentures or other securities from being stamped and from being chargeable with certain further duty shall apply to the bonds, debentures or other securities of all outstanding loans of the kind mentioned therein, and all such bonds, debentures or other securities shall be valid, whether the same are stamped or not:

Provided that nothing herein contained shall exempt the local authority which has issued such bonds, debentures or other securities from the duty chargeable in respect thereof prior to the twenty-sixth day of March, 1897, when such duty has not already been paid or remitted by order issued by the [Central Government].

(3) In the case of wilful neglect to pay the duty required by this section, the local authority shall be liable to forfeit to the Government a sum equal to ten per centum upon the amount of duty payable, and a like penalty for every month after the first month during which the neglect continues.

Power to
reduce,
remit
or com-
pound
duties.

9. [(1)] [The** * Government] may, by rule or order published in the [Official Gazette],—

- (a) reduce or remit, whether prospectively or retrospectively, in the whole or any part of [the territories under its administration], the duties with which any instruments or any particular class of instruments, or any of the instruments belonging to such class, or any instruments when executed by or in favour of any particular class of persons, or by or in favour of any members of such class, are chargeable, and

¹See now Act IX of 1914.

²These words were substituted for the words "eight annas per centum" by sec. 2 of the Indian Stamp (Amendment) Act, 1910 (VI of 1910).

³These words were substituted for the words "Governor General in Council" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴Section 9 was re-numbered as sub-section (1) of section 9 and sub-section (2) was added by para. 3 and the 1st Schedule of the Adaptation of Laws Order, 1950.

⁵The words "The collecting Government" were substituted for the words "The Governor-General in Council" by para. 3 and the 1st Schedule of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁶The word "collecting" was omitted by para. 3 and the 1st Schedule of the Adaptation of Laws Order, 1950.

⁷These words were substituted for the words "Gazette of India" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁸These words were substituted for the words "British India" by para. 3 and the 1st Sch., *ibid*.

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- (b) provide for the composition or consolidation of duties in the case of issues by any incorporated company or other body corporate of debentures, bonds or other marketable securities.

¹(2) In this section the expression “the Government” means,—

- (a) in relation to stamp-duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts, and in relation to any other stamp-duty chargeable under this Act and falling within entry 96 in List I in the Seventh Schedule to the Constitution, the Central Government;

- (b) save as aforesaid, the State Government.

B.—Of Stamps and the mode of using them.

10. (1) Except as otherwise expressly provided in this Act, all duties with which any instruments are chargeable shall be paid, and such payment shall be indicated on such instruments, by means of stamps—

Duties now to be paid.

- (a) according to the provisions herein contained; or

- (b) when no such provision is applicable thereto as the ²[State Government] may by rule direct.

(2) The rules made under sub-section (1) may, among other matters, regulate,—

- (a) in the case of each kind of instrument the description of stamps which may be used;
- (b) in the case of instruments stamped with impressed stamps the number of stamps which may be used;
- (c) in the case of bills of exchange or promissory notes * * * the size of the paper on which they are written.

11. The following instruments may be stamped with adhesive stamps, namely:—

- (a) instruments chargeable [with a duty not exceeding ten naye paise], except parts of bills of exchange payable otherwise than on demand and drawn in sets;

Use of adhesive stamps.

¹Section 9 was re-numbered as sub-section (1) of section 9 and sub-section (2) was added by para. 3 and the 1st Schedule of the Adaptation of Laws Order, 1950.

²The words “collecting Government” were substituted for the words “Governor-General in Council” by para. 3 and the 1st Schedule of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the words “State Government” were substituted for the words “collecting Government” by para. 3 and the 1st Schedule of the Adaptation of Laws Order, 1950.

³The words “written in any Oriental language” were omitted by sec. 5 of the Indian Stamp (Amendment) Act, 1955 (XLIII of 1955), with effect from the 1st April, 1956.

⁴Substituted for the words “with the duty of one anna or half an anna” by sec. 2 of the Indian Stamp (Amendment) Act, 1958 (XIX of 1958).

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(Chapter II.—Stamp-duties.—Sections 12—15.)

- (b) bills of exchange, ¹*and promissory notes drawn or made out of ²[India];
- (c) entry as an advocate, vakil or attorney on the roll of a High Court;
- (d) notarial acts; and
- (e) transfers by endorsement of shares in any incorporated company or other body corporate.

Cancellation of adhesive stamps

12. (1) (a) Whoever affixes any adhesive stamp to any instrument chargeable with duty which has been executed by any person shall, when affixing such stamp, cancel the same so that it cannot be used again; and

(b) whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

(2) Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again, shall, so far as such stamp is concerned, be deemed to be unstamped.

(3) The person required by sub-section (1) to cancel an adhesive stamp may cancel it by writing on or across the stamp his name or initials or the name or initials of his firm with the true date of his so writing, or in any other effectual manner.

Instruments stamped with impressed stamps how to be written.

13. Every instrument written upon paper stamped with an impressed stamp shall be written in such manner that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument.

Only one instrument to be on same stamp.

14. No second instrument chargeable with duty shall be written upon a piece of stamped paper upon which an instrument chargeable with duty has already been written:

Provided that nothing in this section shall prevent any endorsement which is duly stamped or is not chargeable with duty being made upon any instrument for the purpose of transferring any right created or evidenced thereby, or of acknowledging the receipt of any money or goods the payment or delivery of which is secured thereby.

Instrument written contrary to section 13 or 14 deemed unstamped.

15. Every instrument written in contravention of section 13 or section 14 shall be deemed to be unstamped.

¹The word "cheques" was omitted by sec. 5 of the Indian Finance Act, 1927 (V of 1927).

²See foot-note 1 on page 753, ante.

of 1899.]

(Chapter II.—Stamp-duties.—Sections 16—19.)

16. Where the duty with which an instrument is chargeable, or its exemption from duty, depends in any manner upon the duty actually paid in respect of another instrument, the payment of such last-mentioned duty shall, if application is made in writing to the Collector for that purpose, and on production of both the instruments, be denoted upon such first-mentioned instrument by endorsement under the hand of the Collector or in such other manner (if any) as the '[State Government]' may by rule prescribe.

Denoting duty.

C.—Of the time of stamping instruments.

17. All instruments chargeable with duty and executed by any person in '[India]' shall be stamped before or at the time of execution.

Instruments executed in India.

18. (1) Every instrument chargeable with duty executed only out of '[India]', and not being a bill of exchange, ^{3*} or promissory note, may be stamped within three months after it has been first received in '[India]'.
(2) Where any such instrument cannot, with reference to the description of stamp prescribed therefor, be duly stamped by a private person, it may be taken within the said period of three months to the Collector, who shall stamp the same, in such manner as the '[State Government]' may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for.

Instruments other than bills and notes executed out of India.

19. The first holder in '[India]' of any bill of exchange '[payable otherwise than on demand]', ^{3*} or promissory note drawn or made out of '[India]' shall, before he presents the same for acceptance or payment, or endorses, transfers or otherwise negotiates the same in '[India]', affix thereto the proper stamp and cancel the same:

Bills and notes drawn out of India.

Provided that—

(a) if, at the time any such bill of exchange ^{3*} or note comes into the hands of any holder thereof in '[India]', the proper adhesive stamp is affixed thereto

¹See foot-note 2 on page 761, *ante*.

²See foot-note 1 on page 753, *ante*.

³The word "cheque" was omitted by sec. 5 of the Indian Finance Act, 1927 (V of 1927).

⁴These words were inserted by sec. 5 of the Indian Finance Act, 1927 (V of 1927).

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(Chapter II.—Stamp-duties.—Sections 19A, 20.)

and cancelled in manner prescribed by section 12, and such holder has no reason to believe that such stamp was affixed or cancelled otherwise than by the person and at the time required by this Act, such stamp shall, so far as relates to such holder, be deemed to have been duly affixed and cancelled;

- (b) nothing contained in this proviso shall relieve any person from any penalty incurred by him for omitting to affix or cancel a stamp.

Payment of duty on certain instruments liable to increased duty in West Bengal under clause (bb) of section 3.

¹19A. Where any instrument has become chargeable in any part of "[India] other than "[West Bengal] with duty under this Act or under any other law for the time being in force in any part of "[India] and thereafter becomes chargeable with a higher rate of duty in "[West Bengal] under clause (bb) of the first proviso to section 3—

- (i) notwithstanding anything contained in the first proviso to section 3, the amount of duty chargeable on such instrument shall be the amount chargeable on it under Schedule IA less the amount of duty, if any, already paid on it in ³[West Bengal],
- (ii) in addition to the stamps, if any, already affixed thereto, such instrument shall be stamped with the stamps necessary for the payment of the amount of duty chargeable on it under clause (i) in the same manner and at the same time and by the same persons as though such instrument were an instrument received in "[India] for the first time at the time when it became chargeable with the higher duty.

D.—Of Valuations for Duty.

Conversion of amount expressed in foreign currencies.

20. (1) Where an instrument is chargeable with *ad valorem* duty in respect of any money expressed in any currency other than that of ²[India], such duty shall be calculated on the value of such money in the currency of ²[India] according to the current rate of exchange on the day of the date of the instrument.

¹Section 19A was inserted by sec. 8 of the Bengal Stamp (Amendment) Act, 1922 (Ben. Act III of 1922).

²See foot-note 1 on page 753, *ante*.

³See foot-note 3 on page 759, *ante*.

of 1899.]

(Chapter II.—Stamp-duties.—Sections 21—23A.)

(2) The [Central Government] may, from time to time, by notification in the [Official Gazette], prescribe a rate of exchange for the conversion of British or any foreign currency into the currency of [India] for the purposes of calculating stamp-duty, and such rate shall be deemed to be the current rate for the purposes of sub-section (1).

21. Where an instrument is chargeable with *ad valorem* duty in respect of any stock or of any marketable or other security, such duty shall be calculated on the value of such stock or security according to the average price or the value thereof on the day of the date of the instrument. **Stock and marketable securities how to be valued.**

22. Where an instrument contains a statement of current rate of exchange, or average price, as the case may require, and is stamped in accordance with such statement, it shall, so far as regards the subject-matter of such statement, be presumed, until the contrary is proved, to be duly stamped. **Effect of statement of rate of exchange or average price.**

23. Where interest is expressly made payable by the terms of an instrument, such instrument shall not be chargeable with duty higher than that with which it would have been chargeable had no mention of interest been made therein. **Instruments reserving interest.**

23A. (1) Where an instrument (not being a promissory note or bill of exchange) — **Certain instruments connected with mortgages of marketable securities to be chargeable as agreements.**

(a) is given upon the occasion of the deposit of any marketable security by way of security for money advanced or to be advanced by way of loan, or for an existing or future debt, or

(b) makes redeemable or qualifies a duly stamped transfer, intended as a security, of any marketable security,

it shall be chargeable with duty as if it were an agreement or memorandum of an agreement chargeable with duty under [Article No. 5(c)] of Schedule I.

(2) A release or discharge of any such instrument shall only be chargeable with the like duty.

¹These words were substituted for the words "Governor General in Council" by paragraph 4(I) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the words "Gazette of India", *ibid.*

³See foot-note 1 on page 753, *ante*.

⁴Section 23A was added by sec. 3 of the Indian Stamp (Amendment) Act, 1904 (XV of 1904).

⁵These words and figure were substituted for the words and figure "Article No. 5(b)" by sec. 3 of the Indian Stamp (Amendment) Act, 1912 (I of 1912).

(Chapter II.—Stamp-duties.—Sections 24, 25.)

How
transfer
in consid-
eration of
debt, or
subject to
future
payment,
etc., to be
charged.

24. Where any property is transferred to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, such debt, money or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with *ad valorem* duty:

Provided that nothing in this section shall apply to any such certificate of sale as is mentioned in Article No. 18 of Schedule I.

Explanation.—In the case of a sale of property subject to a mortgage or other incumbrance, any unpaid mortgage-money or money charged, together with the interest (if any) due on the same, shall be deemed to be part of the consideration for the sale:

Provided that, where property subject to a mortgage is transferred to the mortgagee, he shall be entitled to deduct from the duty payable on the transfer the amount of any duty already paid in respect of the mortgage.

Illustrations.

(1) A owes B Rs. 1,000. A sells a property to B, the consideration being Rs. 500 and the release of the previous debt of Rs. 1,000. Stamp-duty is payable on Rs. 1,500.

(2) A sells a property to B for Rs. 500 which is subject to a mortgage to C for Rs. 1,000 and unpaid interest Rs. 200. Stamp-duty is payable on Rs. 1,700.

(3) A mortgages a house of the value of Rs. 10,000 to B for Rs. 5,000. B afterwards buys the house from A. Stamp-duty is payable on Rs. 10,000 less the amount of stamp-duty already paid for the mortgage.

Valuation
in case of
annuity,
etc.

25. Where an instrument is executed to secure the payment of an annuity or other sum payable periodically, or where the consideration for a conveyance is an annuity or other sum payable periodically, the amount secured by such instrument or the consideration for such conveyance, as the case may be, shall, for the purposes of this Act, be deemed to be,—

(a) where the sum is payable for a definite period so that the total amount to be paid can be previously ascertained—such total amount;

(b) where the sum is payable in perpetuity or for an indefinite time not terminable with any life in being at the date of such instrument or conveyance—the total amount which, according to the terms of such instrument or conveyance, will or may be payable during the period of twenty years calculated from the date on which the first payment becomes due; and

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(Chapter II.—Stamp-dutes.—Sections 26, 27.)

- (c) where the sum is payable for an indefinite time terminable with any life in being at the date of such instrument or conveyance—the maximum amount which will or may be payable as aforesaid during the period of twelve years calculated from the date on which the first payment becomes due.

26. Where the amount or value of the subject-matter of any instrument chargeable with *ad valorem* duty cannot be, or (in the case of an instrument executed before the commencement of this Act) could not have been, ascertained at the date of its execution or first execution, nothing shall be claimable under such instrument more than the highest amount or value for which, if stated in an instrument of the same description, the stamp actually used would, at the date of such execution, have been sufficient:

Stamp where value of subject-matter is indeterminate.

¹Provided that, in the case of the lease of a mine in which royalty on a share of the produce is received as the rent or part of the rent, it shall be sufficient to have estimated such royalty or the value of such share, for the purpose of stamp-duty,

- (a) when the lease has been granted by or on behalf of ²[the Government], at such amount or value as the Collector may, having regard to all the circumstances of the case, have estimated as likely to be payable by way of royalty or share to ³[the Government] under the lease, or,
- (b) when the lease has been granted by any other person, at twenty thousand rupees a year;

and the whole amount of such royalty or share, whatever it may be, shall be claimable under such lease:

Provided also that, where proceedings have been taken in respect of an instrument under section 31 or 41; the amount certified by the Collector shall be deemed to be the stamp actually used at the date of execution.

27. The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

Facts affecting duty to be set forth in instrument.

¹This proviso was substituted for the original proviso by sec. 4 of the Indian Stamp (Amendment) Act, 1904 (XV of 1904).

²The words "the Crown" were substituted for the words "the Secretary of State in Council" by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

³The words "the Crown" were substituted for the words "the said Secretary of State in Council", by para. 3 and the 1st Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

(Chapter II.—Stamp-duties.—Section 28.)

Direction
as to duty
in case of
certain
convey-
ances.

28. (1) Where any property has been contracted to be sold for one consideration for the whole, and is conveyed to the purchaser in separate parts by different instruments, the consideration shall be apportioned in such manner as the parties think fit, provided that a distinct consideration for each separate part is set forth in the conveyance relating thereto, and such conveyance shall be chargeable with *ad valorem* duty in respect of such distinct consideration.

(2) Where property contracted to be purchased for one consideration for the whole, by two or more persons jointly, or by any person for himself and others, or wholly for others, is conveyed in parts by separate instruments to the persons by or for whom the same was purchased, for distinct parts of the consideration, the conveyance of each separate part shall be chargeable with *ad valorem* duty in respect of the distinct part of the consideration therein specified.

(3) Where a person, having contracted for the purchase of any property but not having obtained a conveyance thereof, contracts to sell the same to any other person and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance shall be chargeable with *ad valorem* duty in respect of the consideration for the sale by the original purchaser to the sub-purchaser.

(4) Where a person, having contracted for the purchase of any property but not having obtained a conveyance thereof, contracts to sell the whole, or any part thereof, to any other person or persons, and the property is in consequence conveyed by the original seller to different persons in parts, the conveyance of each part sold to a sub-purchaser shall be chargeable with *ad valorem* duty in respect only of the consideration paid by such sub-purchaser, without regard to the amount or value of the original consideration; and the conveyance of the residue (if any) of such property to the original purchaser shall be chargeable with *ad valorem* duty in respect only of the excess of the original consideration over the aggregate of the considerations paid by the sub-purchaser:

Provided that the duty on such last-mentioned conveyance shall in no case be less than ¹[two rupees].

(5) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with *ad valorem* duty in respect of the consideration paid by him and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property by the original seller shall be chargeable with a duty equal to that which would be chargeable on a conveyance for the consideration obtained by such original seller, or, where such duty would exceed five rupees, with a duty of five rupees.

¹These words were substituted for the words "one rupee" by sec. 6 of the Indian Stamp (Bengal Amendment) Act, 1935 (Ben. Act XII of 1935).

of 1899.]

(Chapter II.—Stamp-duties.—Section 29.)

E.—Duty by whom payable.

29. In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne,— Duties by whom payable.

(a) in the case of any instrument described in any of the following articles of Schedule I, namely:—

No. 2 (Administration Bond),

¹[No. 6 (Agreement relating to Deposit of Title-deeds, Pawn or Pledge),]

No. 13 (Bill of Exchange),

No. 15 (Bond),

No. 16 (Bottomry Bond),

No. 26 (Customs Bond),

No. 27 (Debenture),

No. 32 (Further charge),

No. 34 (Indemnity-Bond),

No. 40 (Mortgage-deed),

No. 49 (Promissory-note),

No. 55 (Release),

No. 56 (Respondentia Bond),

No. 57 (Security-bond or Mortgage-deed),

No. 58 (Settlement),

No. 62 (a) (Transfer of shares, in an incorporated Company or other body corporate),

No. 62 (b) (Transfer of debentures, being marketable securities, whether the debenture is liable to duty or not, except debentures provided for by section 8),

No. 62 (c) (Transfer of any interest secured by a bond, mortgage-deed or policy of insurance),

by the person drawing, making or executing such instrument;

²[(b) in the case of a policy of insurance other than fire-insurance—by the person effecting the insurance;

¹These words and figure were substituted for the words and figure "No. 6 (Agreement to mortgage)" by sec. 5 of the Indian Stamp (Amendment) Act, 1904 (XV of 1904).

²These clauses (b) and (bb) were substituted for cl. (b) by sec. 4 of the Indian Stamp (Amendment) Act, 1906 (V of 1906).

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- (bb) in the case of a policy of fire-insurance—by the person issuing the policy;]
- (c) in the case of a conveyance (including a re-conveyance of mortgaged property)—by the grantee: in the case of a lease or agreement to lease—by the lessee or intended lessee:
- (d) in the case of a counterpart of a lease—by the lessor;
- (e) in the case of an instrument of exchange—by the parties in equal shares;
- (f) in the case of a certificate of sale—by the purchaser of the property to which such certificate relates; and
- (g) in the case of an instrument of partition—by the parties thereto in proportion to their respective shares in the whole property partitioned, or when the partition is made in execution of an order passed by a Revenue-authority or Civil Court or arbitrator, in such proportion as such authority, Court or arbitrator directs.

Applica-
tion of
sections
23A, 24
and 29 to
instru-
ment
charge-
able with
duty under
Schedule
IA.

¹29A. In applying sections 23A, 24 or 29 to any instrument chargeable with a higher rate of duty under the Bengal Stamp (Amendment) Act, 1922, ²[or the Indian Stamp (Bengal Amendment) Act, 1935], the references in those sections to the several articles in Schedule I shall be deemed to be references to the corresponding articles in Schedule IA.

Ben. Act
III of
1922.
Ben. Act
XII of
1935.

Obligation
to give
receipt in
certain
cases.

30. Any person receiving any money exceeding twenty rupees in amount, or any bill of exchange, cheque or promissory note for an amount exceeding twenty rupees, or receiving in satisfaction or part satisfaction of a debt any moveable property exceeding twenty rupees in value, shall, on demand by the person paying or delivering such money, bill, cheque, note or property, give a duly stamped receipt for the same.

³[Any person receiving or taking credit for any premium or consideration for any renewal of any contract of fire-insurance, shall, within one month after receiving or taking credit for such premium or consideration, give a duly stamped receipt for the same.]

¹Section 29A was inserted by sec. 9 of the Bengal Stamp (Amendment) Act, 1922 (Ben. Act II of 1922).

²These words were inserted by sec. 5 of the Indian Stamp (Bengal Amendment) Act, 1935 (Ben. Act XII of 1935).

³This paragraph was added by sec. 5 of the Indian Stamp (Amendment) Act, 1906 (V of 1906).

of 1899.]

CHAPTER III.

(Chapter III.—Adjudication as to Stamps.—Sections 31, 32.)

ADJUDICATION AS TO STAMPS.

31. (1) When any instrument, whether executed or not and whether previously stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding five rupees and not less than [fifty naye paise] as the Collector may in each case direct, the Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable.

Adjudica-
tion as to
proper
stamp.

(2) For this purpose the Collector may require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly:

Provided that—

- (a) no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding, except in an inquiry as to the duty with which the instrument to which it relates is chargeable; and
- (b) every person by whom any such evidence is furnished shall, on payment of the full duty with which the instrument to which it relates is chargeable, be relieved from any penalty which he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.

32. (1) When an instrument brought to the Collector under section 31, is, in his opinion, one of a description chargeable with duty, and—

Certificate
by
Collector.

- (a) the Collector determines that it is already fully stamped, or
- (b) the duty determined by the Collector under section 31, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid,

the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.

(2) When such instrument is, in his opinion, not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.

¹Substituted for the words "eight annas" by sec. 3 of the Indian Stamp (Amendment) Act, 1958 (XIX of 1958).

(Chapter III.—Adjudication as to Stamps.—Chapter IV.—
Instruments not duly stamped.—Section 33.)

(3) Any instrument upon which an endorsement has been made under this section, shall be deemed to be duly stamped or not chargeable with duty, as the case may be; and, if chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped:

Provided that nothing in this section shall authorise the Collector to endorse—

- (a) any instrument ¹[other than an instrument chargeable with a duty under clause (bb) of the first proviso to section 3] executed or first executed in ²[India] and brought to him after the expiration of one month from the date of its execution or first execution, as the case may be;
- (b) any instrument executed or first executed out of ²[India] and brought to him after the expiration of three months after it has been first received in ²[India]³;
- (c) any instrument chargeable ⁴[with a duty not exceeding ten naye paise] or any bill of exchange or promissory note, when brought to him, after the drawing or execution thereof, on paper not duly stamped; ⁵[or
- (d) any instrument chargeable with duty under clause (bb) of the first proviso to section 3 and brought to him after the expiration of three months of the date on which it is first received in West Bengal⁶].

CHAPTER IV.

INSTRUMENTS NOT DULY STAMPED.

Examina-
tion and
impound-
ing of
instru-
ments.

33. (1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

¹These words were inserted by sec. 10(1) of the Bengal Stamp (Amendment) Act, 1922 (Ben. Act III of 1922).

²See foot-note 1 on page 753, *ante*.

³The word "or" was omitted by sec. 10(2) of the Bengal Stamp (Amendment) Act, 1922 (Ben. Act III of 1922).

⁴Substituted for the words "with the duty of one anna or half an anna" by sec. 4 of the Indian Stamp (Amendment) Act, 1958 (XIX of 1958).

⁵The word "or" and proviso (d), within square brackets, were inserted by sec. 10(3) of the Bengal Stamp (Amendment) Act, 1922 (Ben. Act III of 1922).

⁶See foot-note 3 on page 759, *ante*.

of 1899.]

(Chapter IV.—Instruments not duly stamped.—Sections 34, 35.)

(2) for that purpose every such person shall examine every instrument so chargeable and so produced or coming before him in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in ¹[India] when such instrument was executed or first executed:

Provided that—

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898;

(b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

(3) For the purposes of the section, in cases of doubt,—

(a) the ²[State Government] may determine what offices shall be deemed to be public offices; and

(b) the ²[State Government] may determine who shall be deemed to be persons in charge of public offices.

34. Where any receipt chargeable ³[with a duty not exceeding ten naye paise] is tendered to or produced before any officer unstamped in the course of the audit of any public account, such officer may in his discretion, instead of impounding the instrument, require a duly stamped receipt to be substituted therefor.

Special provision as to unstamped receipts.

35. No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:

Instruments not duly stamped inadmissible in evidence, etc.

Provided that—

(a) any such instrument not being an instrument chargeable ⁴[with a duty not exceeding ten naye paise] only, or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable,

¹See foot-note 1 on page 753, *ante*.

²The words "collecting Government" were substituted for the words "Governor General in Council" by para. 3 and the 1st Schedule of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the words "State Government" were substituted for the words "collecting Government" by para. 3 and the 1st Schedule of the Adaptation of Laws Order, 1950.

³Substituted for the words "with a duty of one anna" by sec. 5 of the Indian Stamp (Amendment) Act, 1958 (XIX of 1958).

⁴Substituted for the words "with a duty of one anna or half an anna" by sec. 6, *ibid*

(Chapter IV.—Instruments not duly stamped.—Sections 36—38.)

or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

- (b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;
- (c) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;

- (d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898; Act V of 1898.

- (e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of [the Government], or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act.

Admission of instrument where not to be questioned.

36. Where an instrument has been admitted in evidence, such admission shall not, except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

Admission of improperly stamped instruments.

37. The [State Government] may make rules providing that, where an instrument bears a stamp of sufficient amount but of improper description, it may, on payment of the duty with which the same is chargeable, be certified to be duly stamped, and any instrument so certified shall then be deemed to have been duly stamped as from the date of its execution.

Instruments impounded, how dealt with.

38. (1) When the person impounding an instrument under section 33 has by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by section 35 or of duty as provided by

¹The words "the Crown" were substituted for the words "the Government" by para. 3 and the 1st Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²The words "the collecting Government" were substituted for the words "the Governor-General in Council" by para. 3 and the 1st Schedule of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the words "State Government" were substituted for the words "collecting Government" by para. 3 and the 1st Schedule of the Adaptation of Laws Order, 1950.

(Chapter IV.—Instruments not duly stamped.—Sections 39, 40.)

section 37, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

(2) In every other case, the person so impounding an instrument shall send it in original to the Collector.

39. (1) When a copy of an instrument is sent to the Collector under section 38, sub-section (1), he may, if he thinks fit, ^{****} refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument.

Collector's power to refund penalty paid under section 38, sub-section (1).

(2) When such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may refund the whole penalty so paid.

40. (1) When the Collector impounds any instrument under section 33, or receives any instrument sent to him under section 38, sub-section (2), not being an instrument chargeable "[with a duty not exceeding ten naye paise] only or a bill of exchange or promissory note, he shall adopt the following procedure:—

Collector's power to stamp instruments impounded.

(a) if he is of opinion that such instrument is duly stamped or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be;

(b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees; or, if he thinks fit, "[an amount not exceeding] ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees:

Provided that, when such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

(2) Every certificate under clause (a) of sub-section (1) shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.

¹The words "upon application made to him in this behalf or, if no application is made, with the consent of the Chief Controlling Revenue-authority" were omitted by sec. 2 and Schedule, Part I, of the Decentralization Act, 1914 (IV of 1914).

²Substituted for the words "with a duty of one anna or half an anna" by sec. 6 of the Indian Stamp (Amendment) Act, 1958 (XIX of 1958).

³These words were inserted by sec. 6 of the Indian Stamp (Amendment) Act, 1904 (XV of 1904).

[Act II

(Chapter IV.—Instruments not duly stamped.—Sections 41, 42.)

(3) Where an instrument has been sent to the Collector under section 38, sub-section (2), the Collector shall, when he has dealt with it as provided by this section, return it to the impounding officer.

Instru-
ments
unduly
stamped
by
accident.

41. if any instrument chargeable with duty and not duly stamped, not being an instrument chargeable ¹[with a duty not exceeding ten naye paise] only or a bill of exchange or promissory note is produced by any person of his own motion before the Collector within one year from the date of its execution or first execution, and such person brings to the notice of the Collector the fact that such instrument is not duly stamped and offers to pay to the Collector the amount of the proper duty, or the amount required to make up the same, and the Collector is satisfied that the omission to duly stamp such instrument has been occasioned by accident, mistake or urgent necessity, he may, instead of proceeding under sections 33 and 40, receive such amount and proceed as next hereinafter prescribed.

Endorse-
ment of
instru-
ments on
which duty
has been
paid under
section
35, 40 or
41.

42. (1) When the duty and penalty (if any) leviable in respect of any instrument have been paid under section 35, section 40 or section 41, the person admitting such instrument in evidence or the Collector, as the case may be, shall certify by endorsement thereon that the proper duty or, as the case may be, the proper duty and penalty (stating the amount of each) have been levied in respect thereof and the name and residence of the person paying them.

(2) Every instrument so endorsed shall thereupon be admissible in evidence, and may be registered and acted upon and authenticated as if it had been duly stamped, and shall be delivered on his application in this behalf to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct:

Provided that—

(a) no instrument which has been admitted in evidence upon payment of duty, and a penalty under section 35, shall be so delivered before the expiration of one month from the date of such impounding, or if the Collector has certified that its further detention is necessary and has not cancelled such certificate;

(b) nothing in this section shall affect the ²Code of Civil Procedure, section 144, clause 3. Act XIV of 1882.

¹Substituted for the words "with a duty of one anna or half an anna" by sec. 6 of the Indian Stamp (Amendment) Act, 1958 (XIX of 1958).

²See now the Code of Civil Procedure, 1908 (V of 1908), Schedule I, Order XIII, rule 9.

of 1899.]

(Chapter IV.—Instruments not duly stamped—Sections 43—46.)

43. The taking of proceedings or the payment of a penalty under this Chapter in respect of any instrument shall not bar the prosecution of any person who appears to have committed an offence against the Stamp-law in respect of such instrument: Prosecution for offence against Stamp-law.

Provided that no such prosecution shall be instituted in the case of any instrument in respect of which such a penalty has been paid, unless it appears to the Collector that the offence was committed with an intention of evading payment of the proper duty.

44. (1) When any duty or penalty has been paid under section 35, section 37, section 40 or section 41, by any person in respect of an instrument, and, by agreement or under the provisions of section 29 or any other enactment in force at the time such instrument was executed, some other person was bound to bear the expense of providing the proper stamp for such instrument, the first mentioned person shall be entitled to recover from such other person the amount of the duty or penalty so paid. Persons paying duty or penalty may recover same in certain cases.

(2) For the purpose of such recovery, any certificate granted in respect of such instrument under this Act shall be conclusive evidence of the matters therein certified.

(3) Such amount may, if the Court thinks fit, be included in any order as to costs in any suit or proceeding to which such persons are parties and in which such instrument has been tendered in evidence. If the Court does not include the amount in such order, no further proceedings for the recovery of the amount shall be maintainable.

45. (1) Where any penalty is paid under section 35 or section 40, the Chief Controlling Revenue-authority may, upon application in writing made within one year from the date of the payment, refund such penalty wholly or in part. Power to Revenue-authority to refund penalty or excess duty in certain cases.

(2) Where, in the opinion of the Chief Controlling Revenue-authority, stamp-duty in excess of that which is legally chargeable has been charged and paid under section 35 or section 40, such authority may, upon application in writing made within three months of the order charging the same, refund the excess.

46. (1) If any instrument sent to the Collector under section 38, sub-section (2), is lost, destroyed or damaged during transmission, the person sending the same shall not be liable for such loss, destruction or damage. Non-liability for loss of instruments sent under section 38.

(2) When any instrument is about to be so sent, the person from whose possession it came into the hands of the person impounding the same may require a copy thereof to be made at the expense of such first-mentioned person and authenticated by the person impounding such instrument.

(Chapter IV.—Instruments not duly stamped.—Chapter V.—
Allowances for Stamps in certain cases.—Sections 47—49.)

Power of
payer to
stamp
bills and
promissory
notes
received
by him un-
stamped.

47. When any bill of exchange ¹[or promissory note] chargeable ²[with a duty not exceeding ten naye paise] is presented for payment unstamped, the person to whom it is so presented may affix thereto the necessary adhesive stamp, and, upon cancelling the same in manner hereinbefore provided, may pay the sum payable upon such bill ³[or note], and may charge the duty against the person who ought to have paid the same, or deduct it from the sum payable as aforesaid, and such bill ³[or note] shall, so far as respects the duty, be deemed good and valid:

Provided that nothing herein contained shall relieve any person from any penalty or proceeding to which he may be liable in relation to such bill, ³[or note].

Recovery
of duties
and
penalties.

48. All duties, penalties and other sums required to be paid under this Chapter may be recovered by the Collector by distress and sale of the moveable property of the person from whom the same are due, or by any other process for the time being in force for the recovery of arrears of land-revenue.

Validity of
certificate
or endorse-
ment in
respect of
instru-
ments for
which
higher
rate of
duty is
payable
in West
Bengal.

⁴48A. Notwithstanding anything contained in this Act, no certificate or endorsement under this Act in respect of an instrument chargeable in ⁵[West Bengal] with a higher rate of duty under the Bengal Stamp (Amendment) Act, 1922, ⁶[or the Indian Stamp (Bengal Amendment) Act, 1935], shall be received in evidence or be in any way valid in respect of the payment of duty on such instrument or in respect of the chargeability of such instrument with duty, unless the duty chargeable under the Bengal Stamp (Amendment) Act, 1922, ⁶[or the Indian Stamp (Bengal Amendment) Act, 1935], has been paid on such instrument.

Ben. Act
III of
1922.
Ben. Act
XII of
1935.

CHAPTER V.

ALLOWANCES FOR STAMPS IN CERTAIN CASES.

Allowance
for spoiled
stamps.

49. Subject to such rules as may be made by ⁷[the State Government] as to the evidence to be required, or the enquiry to be made, the Collector may, on application made within the

¹These words were substituted for the words "promissory note or cheque" by sec. 5 of the Indian Finance Act, 1927 (V of 1927).

²Substituted for the words "with the duty of one anna" by sec. 7 of the Indian Stamp (Amendment) Act, 1958 (XIX of 1958).

³These words were substituted for the words "note or cheque" by sec. 5 of the Indian Finance Act, 1927 (V of 1927).

⁴Section 48A was inserted by sec. 11 of the Bengal Stamp (Amendment) Act, 1922 (Ben. Act III of 1922).

⁵See foot-note 3 on page 757, *ante*.

⁶These words were inserted by sec. 5 of the Indian Stamp (Bengal Amendment) Act, 1935 (Ben. Act XII of 1935).

⁷The words "the Collecting Government" were substituted for the words "the Local Government" by para. 3 and the 1st Schedule of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the words "State Government" were substituted for the words "Collecting Government" by para. 3 and the 1st Schedule of the Adaptation of Laws Order, 1950.

of 1899.]

(Chapter V.—Allowances for Stamps in certain cases.—
Section 49.)

period prescribed in section 50, and if he is satisfied as to the facts, make allowance for impressed stamps spoiled in the cases hereinafter mentioned, namely:—

- (a) the stamp on any paper inadvertently and undesignedly spoiled, obliterated or by error in writing or any other means rendered unfit for the purpose intended before any instrument written thereon is executed by any person;
- (b) the stamp on any document which is written out wholly or in part, but which is not signed or executed by any party thereto;
- (c) in the case of bills of exchange ¹[payable otherwise than on demand]^{2*} or promissory notes—
 - (1) the stamp on ³[any such bill of exchange] ^{2**} signed by or on behalf of the drawer which has not been accepted or made use of in any manner whatever or delivered out of his hands for any purpose other than by way of tender for acceptance: provided that the paper on which any such stamp is impressed does not bear any signature intended as or for the acceptance of any bill of exchange ^{2**}to be afterwards written thereon;
 - (2) the stamp on any promissory note signed by or on behalf of the maker which has not been made use of in any manner whatever or delivered out of his hands;
 - (3) the stamp used or intended to be used for ³[any such bill of exchange] ^{4*}or promissory note signed by, or on behalf of, the drawer thereof, but which from any omission or error has been spoiled or rendered useless, although the same, being a bill of exchange ^{2**}may have been presented for acceptance or accepted or endorsed, or, being a promissory note, may have been delivered to the payee: provided that another completed and duly stamped bill of exchange ^{4*}or promissory note is produced identical in every particular, except in the correction of such omission or error as aforesaid, with the spoiled bill, ^{4*}or note;

¹These words were inserted by sec. 5 of the Indian Finance Act, 1927 (V of 1927).

²The words "cheques" and "or cheque" were omitted, *ibid*.

³These words were substituted for the words "any bill of exchange", *ibid*.

⁴The word "cheque" was omitted, *ibid*.

**(Chapter V.—Allowances for Stamps in certain cases.—
Section 49.)**

(d) the stamp used for an instrument executed by any party thereto which—

- (1) has been afterwards found to be absolutely void in law from the beginning;
- (2) has been afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended;
- (3) by reason of the death of any person by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, cannot be completed so as to effect the intended transaction in the form proposed;
- (4) for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended;
- (5) by reason of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose;
- (6) becomes useless in consequence of the transaction intended to be thereby effected being effected by some other instrument between the same parties and bearing a stamp of not less value;
- (7) is deficient in value and the transaction intended to be thereby effected has been effected by some other instrument between the same parties and bearing a stamp of not less value;
- (8) is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped:

Provided that, in the case of an executed instrument, no legal proceeding has been commenced in which the instrument could or would have been given or offered in evidence and that the instrument is given up to be cancelled.

Explanation.—The certificate of the Collector under section 32 that the full duty with which an instrument is chargeable has been paid is an impressed stamp within the meaning of this section.

of 1899.]

(Chapter V.—Allowances for Stamps in certain cases.—
Sections 50, 51.)

50. The application for relief under section 49 shall be made within the following periods, that is to say,—

**Applica-
tion for
relief under
section
49 when to
be made.**

- (1) in the cases mentioned in clause (d) (5), within two months of the date of the instrument;
- (2) in the case of a stamped paper on which no instrument has been executed by any of the parties thereto, within six months after the stamp has been spoiled;
- (3) in the case of a stamped paper in which an instrument has been executed by any of the parties thereto, within six months after the date of the instrument or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed:

Provided that,—

- (a) when the spoiled instrument has been for sufficient reasons sent out of '[India], the application may be made within six months after it has been received back in '[India];
- (b) when, from unavoidable circumstances, any instrument for which another instrument has been substituted, cannot be given up to be cancelled within the aforesaid period, the application may be made within six months after the date of execution of the substituted instrument.

51. The Chief Controlling Revenue-authority '[or the Collector if empowered by the Chief Controlling Revenue-authority in this behalf] may, without limit of time, make allowance for stamped papers used for printed forms of instruments '[by any banker or] by any incorporated company or other body corporate, if for any sufficient reason such forms have ceased to be required by the said '[banker], company or body corporate: provided that such authority is satisfied that the duty in respect of such stamped papers has been duly paid.

**Allowance
in case of
printed
forms no
longer re-
quired by
Corpora-
tions.**

¹See foot-note 1 on page 753, *ante*.

²These words were inserted by sec. 2 and Schedule, Part I. of the Decentralization Act, 1914 (IV of 1914).

³These words were inserted by sec. 6 of the Indian Stamp (Amendment) Act, 1906 (V of 1906).

⁴This word was inserted by sec. 6 of the Indian Stamp (Amendment) Act, 1906 (V of 1906).

Allowance
for misused
stamps.

(Chapter V.—Allowances for Stamps in certain cases.—
Sections 52—54A.)

52. (a) When any person has inadvertently used for an instrument chargeable with duty, a stamp of a description other than that prescribed for such instrument by the rules made under this Act, or a stamp of greater value than was necessary, or has inadvertently used any stamp for an instrument not chargeable with any duty; or

(b) when any stamp used for an instrument has been inadvertently rendered useless under section 15, owing to such instrument having been written in contravention of the provisions of section 13;

the Collector may, on application made within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, and upon the instrument, if chargeable with duty, being re-stamped with the proper duty, cancel and allow as spoiled the stamp so misused or rendered useless.

Allowance
for spoiled
or misused
stamps
how to be
made.

53. In any case in which allowance is made for spoiled or misused stamps, the Collector may give in lieu thereof—

(a) other stamps of the same description and value; or

(b) if required and he thinks fit, stamps of any other description to the same amount in value; or

(c) at his discretion, the same value in money, deducting ¹[ten naye paise] for each rupee or fraction of a rupee.

Allowance
for stamps
not re-
quired for
use.

54. When any person is possessed of a stamp or stamps which have not been spoiled or rendered unfit or useless for the purpose intended, but for which he has no immediate use, the Collector shall repay to such person the value of such stamp or stamps in money, deducting ¹[ten naye paise] for each rupee or portion of a rupee, upon such person delivering up the same to be cancelled, and proving to the Collector's satisfaction—

(a) that such stamp or stamps were purchased by such person with a *bona fide* intention to use them; and

(b) that he has paid the full price thereof; and

(c) that they were so purchased within the period of six months next preceding the date on which they were so delivered:

Provided that, where the person is a licensed vendor of stamps, the Collector may, if he thinks fit, make the repayment of the sum actually paid by the vendor without any such deduction as aforesaid.

Allow-
ances for
stamps in
denomina-
tions of
annas.

54A. Notwithstanding anything contained in section 54, when any person is possessed of a stamp or stamps in any denominations, other than in denominations of annas four or multiples thereof and such stamp or stamps has or have not been spoiled, the Collector shall repay to such person the value of such stamp or stamps in money calculated in accordance with the provisions of sub-section (2) of section 14 of the Indian Coinage Act, 1906, upon such person delivering up, within six months from the commencement of the Indian Stamp (Amendment) Act, 1958, such stamp or stamps to the Collector.

3 of 1906.

19 of 1958.

¹Substituted for the words "one anna" by sec. 8 of the Indian Stamp (Amendment) Act, 1958 (XIX of 1958).

²Section 54A was inserted by sec. 9, *ibid.*

of 1899.]

(Chapter V.—Allowances for Stamps in certain cases.—
Chapter VI.—Reference and Revision.—Sections 55, 56.)

55. When any duly stamped debenture is renewed by the issue of a new debenture in the same terms, the Collector shall, upon application made within one month, repay to the person issuing such debenture, the value of the stamp on the original or on the new debenture, whichever shall be less:

Allowance
on renewal
of certain
debentures.

Provided that the original debenture is produced before the Collector and cancelled by him in such manner as the [State Government] may direct.

Explanation.—A debenture shall be deemed to be renewed in the same terms within the meaning of this section notwithstanding the following changes:—

- (a) the issue of two or more debentures in place of one original debenture, the total amount secured being the same;
- (b) the issue of one debenture in place of two or more original debentures, the total amount secured being the same;
- (c) the substitution of the name of the holder at the time of renewal for the name of the original holder; and
- (d) the alteration of the rate of interest or the dates of payment thereof.

CHAPTER VI.

REFERENCE AND REVISION.

56 (1) The powers exercisable by a Collector under Chapter IV and Chapter V [and under clause (a) of the first proviso to section 26] shall in all cases be subject to the control of the Chief Controlling Revenue-authority.

Control of,
and state-
ment of
case to,
Chief
Control-
ling Reve-
nue-author-
ity.

(2) If any Collector, acting under section 31, section 40 or section 41, feels doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue-authority.

(3) Such authority shall consider the case and send a copy of its decision to the Collector, who shall proceed to assess and charge the duty (if any) in conformity with such decision.

¹The words "Provincial Government" were first substituted for the words "Governor-General in Council" by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

*These words and figure were inserted by sec. 7 of the Indian Stamp (Amendment) Act, 1904 (XV of 1904).

[Act II]

(Chapter VI.—Reference and Revision.—Sections 57—60.)

Statement
of case by
Chief
Control-
ling
Revenue-
authority
to High
Court.

57. (1) The Chief Controlling Revenue-authority may state any case referred to it under section 56, sub-section (2), or otherwise coming to its notice, and refer such case, with its own opinion thereon,—

- ¹(a) if it arises in a State, to the High Court for that State;
- (b) if it arises in the Union territory of Delhi or Himachal Pradesh, to the High Court of Punjab;
- (c) if it arises in the Union territory of Manipur or Tripura, to the High Court of Assam;
- (d) if it arises in the Union territory of the Andaman and Nicobar Islands, to the High Court at Calcutta; and
- (e) if it arises in the Union territory of the Laccadive, Minicoy and Amindivi Islands, to the High Court of Kerala.

(2) Every such case shall be decided by not less than three Judges of the High Court, ²* * * to which it is referred, and in case of difference the opinion of the majority shall prevail.

Power of
High
Court, to
call for
further
particulars
as to case
stated.

58. If the High Court ³* * * is not satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Revenue-authority by which it was stated, to make such additions thereto or alterations therein as the Court may direct in that behalf.

Procedure
in dis-
posing of
case
stated.

59. (1) The High Court ³* * * upon the hearing of any such case, shall decide the questions raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded.

(2) The Court shall send to the Revenue-authority by which the case was stated, a copy of such judgment under the seal of the Court and the signature of the Registrar; and the Revenue-authority shall, on receiving such copy, dispose of the case conformably to such judgment.

Statement
of case
by other
Courts to
High
Court.

60. (1) If any Court, other than a Court mentioned in section 57, feels doubt as to the amount of duty to be paid in respect of any instrument under proviso (a) to section 35, the Judge may draw up a statement of the case and refer it, with his own opinion thereon, for the decision of the High Court ³* * * to which, if he were the Chief Controlling Revenue-authority, he would, under section 57, refer the same.

¹These clauses were substituted by the Schedule of the Adaptation of Laws (No. 2) Order, 1956, for the former clauses (a) to (g) as substituted by the 1st Schedule of the Adaptation of Laws Order, 1950.

²The words "Chief Court or Judicial Commissioner's Court" were omitted by para. 3 and the 1st Schedule of the Adaptation of Laws Order, 1950.

³The words "Chief Court or Judicial Commissioner's Court", which were substituted by para. 3 and the 1st Schedule of the Government of India (Adaptation of Indian Laws) Order, 1937, were omitted by the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948.

of 1899.]

(Chapter VI.—Reference and Revision.—Section 61.)

(2) Such Court shall deal with the case as if it had been referred under section 57, and send a copy of its judgment under the seal of the Court and the signature of the Registrar to the Chief Controlling Revenue-authority and another like copy to the Judge making the reference, who shall, on receiving such copy, dispose of the case conformably to such judgment.

(3) References made under sub-section (1), when made by a Court subordinate to a District Court, shall be made through the District Court, and, when made by any subordinate Revenue Court, shall be made through the Court immediately superior.

at V of
198.

61. (1) When any Court in the exercise of its civil or revenue jurisdiction or any Criminal Court in any proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898, makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty under section 35, the Court to which appeals lie from, or references are made by, such first-mentioned Court may, of its own motion or on the application of the Collector, take such order into consideration.

Revision
of certain
decisions
of Courts
regarding
the suffi-
ciency of
stamps.

(2) If such Court, after such consideration, is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under section 35, or without the payment of a higher duty and penalty than those paid, it may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is, to produce the same, and may impound the same when produced.

(3) When any declaration has been recorded under sub-section (2), the Court recording the same shall send a copy thereof to the Collector, and, where the instrument to which it relates has been impounded or is otherwise in the possession of such Court, shall also send him such instrument.

(4) The Collector may thereupon, notwithstanding anything contained in the order admitting such instrument in evidence, or in any certificate granted under section 42, or in section 43, prosecute any person for any offence against the Stamp-law which the Collector considers him to have committed in respect of such instrument:

Provided that—

(a) no such prosecution shall be instituted where the amount (including duty and penalty) which, according to the determination of such Court, was payable in respect of the instrument under section 35, is paid to the Collector, unless he thinks that the offence was committed with an intention of evading payment of the proper duty;

(b) except for the purposes of such prosecution, no declaration made under this section shall affect the validity of any order admitting any instrument in evidence, or of any certificate granted under section 42.

(Chapter VII.—Criminal Offences and Procedure.—
Sections 62—64.)

CHAPTER VII.

CRIMINAL OFFENCES AND PROCEDURE.

Penalty
for execu-
ting, etc,
instru-
ment not
duly
stamped.

62. (1) Any person—

- (a) drawing, making, issuing, endorsing or transferring, or signing otherwise than as a witness, or presenting for acceptance or payment, or accepting, paying or receiving payment of, or in any manner negotiating, any bill of exchange ¹[payable otherwise than on demand],^{2**} or promissory note without the same duly stamped; or
- (b) executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped; or
- (c) voting or attempting to vote under any proxy not duly stamped;

shall for every such offence be punishable with fine which may extend to five hundred rupees:

Provided that, when any penalty has been paid in respect of any instrument under section 35, section 40 or section 61, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument upon the person who paid such penalty.

(2) If a share-warrant is issued without being duly stamped, the company issuing the same, and also every person who, at the time when it is issued, is the managing director or secretary or other principal officer of the company, shall be punishable with fine which may extend to five hundred rupees.

Penalty for
failure to
cancel
adhesive
stamp.

63. Any person required by section 12 to cancel an adhesive stamp, and failing to cancel such stamp in manner prescribed by that section, shall be punishable with fine which may extend to one hundred rupees.

Penalty for
omission
to comply
with provi-
sions of
section 27.

64. Any person who, with intent to defraud the Govern-
ment,—

- (a) executes any instrument in which all the facts and circumstances required by section 27 to be set forth in such instrument are not fully and truly set forth; or,
- (b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances; or

¹These words were inserted by sec. 5 of the Indian Finance Act, 1927 (V of 1927).

²The word "cheque" was omitted by sec. 5, *ibid*.

of 1899.]

(Chapter VII.—Criminal Offences and Procedure.—
Sections 65—68.)

- (c) does any other act calculated to deprive the Government of any duty or penalty under this Act;

shall be punishable with fine which may extend to five thousand rupees.

65. Any person who—

- (a) being required under section 30 to give a receipt, refuses or neglects to give the same; or,
(b) with intent to defraud the Government of any duty, upon a payment of money or delivery of property exceeding twenty rupees in amount or value, gives a receipt for an amount or value not exceeding twenty rupees, or separates or divides the money or property paid or delivered;

Penalty for refusal to give receipt, and for devices to evade duty on receipts.

shall be punishable with fine which may extend to one hundred rupees.

66. Any person who—

- (a) receives, or takes credit for, any premium or consideration for any contract of insurance and does not, within one month after receiving, or taking credit for, such premium or consideration, make out and execute a duly stamped policy of such insurance; or
(b) makes, executes or delivers out any policy which is not duly stamped, or pays or allows in account, or agrees to pay or allow in account, any money upon, or in respect of, any such policy;

Penalty for not making out policy, or making one not duly stamped.

shall be punishable with fine which may extend to two hundred rupees.

67. Any person drawing or executing a bill of exchange¹[payable otherwise than on demand] or a policy of marine insurance purporting to be drawn or executed in a set of two or more, and not at the same time drawing or executing on paper duly stamped the whole number of bills or policies of which such bill or policy purports the set to consist, shall be punishable with fine which may extend to one thousand rupees.

Penalty for not drawing full number of bills or marine policies purporting to be in sets.

68. Any person who,—

- (a) with intent to defraud the Government of duty, draws, makes or issues any bill of exchange or promissory note bearing a date subsequent to that on which such bill or note is actually drawn or made; or

Penalty for post-dating bills, and for other devices to defraud the revenue.

¹These words were inserted by sec. 5 of the Indian Finance Act, 1927 (V of 1927).

[Act II]**(Chapter VII.—Criminal Offences and Procedure.—Chapter VIII.—Supplemental Provisions.—Sections 69—73.)**

- (b) knowing that such bill or note has been so post-dated, endorses, transfers, presents for acceptance or payment, or accepts, pays or receives payment of, such bill or note, or in any manner negotiates the same; or
- (c) with the like intent, practises or is concerned in any act, contrivance or device not specially provided for by this Act or any other law for the time being in force;

shall be punishable with fine which may extend to one thousand rupees.

Penalty for breach of rule relating to sale of stamps and for unauthorised sale.

69. (a) Any person appointed to sell stamps who disobeys any rule made under section 74; and

(b) any person not so appointed who sells or offers for sale any stamp (other than a '[ten naye paise or five naye paise] adhesive stamp);

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Institution and conduct of prosecutions.

70. (1) No prosecution in respect of any offence punishable under this Act or any Act hereby repealed, shall be instituted without the sanction of the Collector or such other officer as '[the State Government] generally, or the Collector specially, authorises in that behalf.

(2) The Chief Controlling Revenue-authority, or any officer generally or specially authorised by it in this behalf, may stay any such prosecution or compound any such offence.

(3) The amount of any such composition shall be recoverable in the manner provided by section 48.

Jurisdiction of Magistrates.

71. No Magistrate other than a Presidency Magistrate or a Magistrate whose powers are not less than those of a Magistrate of the second class, shall try any offence under this Act.

Place of trial.

72. Every such offence committed in respect of any instrument may be tried in any district or presidency-town in which such instrument is found as well as in any district or presidency-town in which such offence might be tried under the Code of Criminal Procedure for the time being in force.

CHAPTER VIII.**SUPPLEMENTAL PROVISIONS.**

Books, etc., to be open to inspection.

73. Every public officer having in his custody any registers, books, records, papers, documents or proceedings, the inspection whereof may tend to secure any duty, or to prove or lead to the discovery of any fraud or omission in relation to any duty, shall at all reasonable times permit any person authorised in writing by the Collector to inspect for such purpose the registers, books,

¹Substituted for the words "one-anna or half an anna" by sec. 10 of the Indian Stamp (Amendment) Act, 1958 (XIX of 1958).

²The words "the Collecting Government" were substituted for the words "the Local Government" by para. 3 and the 1st Schedule of the Government of India (Adaptation of Indian Laws) Order 1937, and thereafter the words "State Government" were substituted for the words "Collecting Government" by para. 3 and the 1st Schedule to the Adaptation of Laws Order, 1950.

of 1899.]

(Chapter VIII.—Supplemental Provisions.—Sections 74—76A.)

papers, documents and proceedings, and to take such notes and extracts as he may deem necessary, without fee or charge.

74. ¹[The State Government] ^{2*} * * * may make rules for regulating—

(a) the supply and sale of stamps and stamped papers,

(b) the persons by whom alone such sale is to be conducted, and

(c) the duties and remuneration of such persons:

Powers to make rules relating to sale of stamps.

Provided that such rules shall not restrict the sale of ³[ten naye paise or five naye paise] adhesive stamps.

75. The ⁴[State Government] may make rules to carry out generally the purposes of this Act, and may by such rules prescribe the fines, which shall in no case exceed five hundred rupees, to be incurred on breach thereof.

Power to make rules generally to carry out Act.

76. ⁵[(1) All rules made under this Act shall be published in the *Official Gazette*.]

Publication of rules.

(2) All rules published as required by this section shall, upon such publication, have effect as if enacted by this Act.

⁶76A. ⁷[^{8*} * * * The State Government, may by notification in the *Official Gazette*], delegate—

Delegation of certain powers.

(a) all or any of the powers conferred on it by sections 2(9), 33(3)(b), 70(1), 74 and 78 to the Chief Controlling Revenue-authority; and

(b) all or any of the powers conferred on the Chief Controlling Revenue-authority by sections 45(1)(2), 56(1) and 70(2) to such subordinate Revenue-authority as may be specified in the notification.

¹The words "collecting Government" were substituted for the words "Local Government" by para. 3 and the 1st Schedule of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the words "State Government" were substituted for the words "collecting Government" by para. 3 and the 1st Schedule of the Adaptation of Laws Order, 1950.

²The words "subject to the control of the Governor General in Council" were omitted by para. 3 and the 1st Schedule of the Government of India (Adaptation of Indian Laws) Order, 1937.

³Substituted for the words "one-anna or half an anna" by sec. 10 of the Indian Stamp (Amendment) Act, 1958 (XIX of 1958).

⁴See foot-note 3 on page 753, *ante*.

⁵Sub-section (1) was substituted for the original sub-section by para. 3 and the 1st Schedule of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁶Section 76A was inserted by sec. 2 and Schedule, Part I, of the Decentralization Act, 1914 (IV of 1914).

⁷The words "The Central Government, subject to the provisions of section 124(1) of the Government of India Act, 1935, and the Provincial Government, may by notification in the *Official Gazette*" were substituted for the words "The Local Government may by notification in the local *Official Gazette*" by para. 3 and the 1st Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" and the words "The Central Government, subject to the provisions of section 124(1) of the Government of India Act, 1935, and" were omitted by paragraph 4(1) and para. 3 and the 1st Schedule, respectively, of the Adaptation of Laws Order, 1950.

[Act II]

(Chapter VIII.—Supplemental Provisions.—Sections 77—79.)

Saving as
to court-
fees.

77. ¹[Except for the provisions as to copies contained in section 6A] nothing in this Act contained shall be deemed to affect the duties chargeable under any enactment for the time being in force relating to court-fees.

Saving as
to certain
stamps.

²77A. All stamps in denominations of annas four or multiples thereof shall be deemed to be stamps of the value of twenty-five naye paise or, as the case may be, multiples thereof and shall, accordingly, be valid for all the purposes of this Act.

Act to be
translated
and sold
cheaply.

78. Every ³[State Government] shall make provision for the sale of translations of this Act in the principal vernacular languages of the territories administered by it at a price not exceeding ⁴[twenty-five naye paise] per copy.

79. [Repeal.]—*Rep. by sec. 3 and Schedule II of the Repealing and Amending Act, 1914 (X of 1914).*

¹These words were inserted by sec. 12 of the Bengal Stamp (Amendment) Act, 1922 (Ben. Act III of 1922).

²Section 77A was inserted by sec. 11 of the Indian Stamp (Amendment) Act, 1958 (XIX of 1958).

³The words "Provincial Government" were first substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁴Substituted for the words "four annas" by sec. 12 of the Indian Stamp (Amendment) Act, 1958 (XIX of 1958).

SCHEDULE I.

STAMP-DUTY ON INSTRUMENTS.
(See section 3.)

Description of Instrument.	Proper Stamp-duty.
1. Acknowledgment of a debt exceeding twenty rupees in amount or value, written or signed by, or on behalf of, a debtor in order to supply evidence of such debt in any book (other than a banker's pass-book) or on a separate piece of paper when such book or paper is left in the creditor's possession: provided that such acknowledgment does not contain any promise to pay the debt or any stipulation to pay interest or to deliver any goods or other property.	One anna.
2. Administration-Bond , including a bond given under section 256 of the Indian Succession Act, 1865 ¹ , section 6 of the Government Savings Banks Act, 1873, section 78 of the Probate and Administration Act, 1881 ¹ , or section 9 or section 10 of the Succession Certificate Act, 1889 ¹ ,— (a) where the amount does not exceed Rs. 1,000 (b) in any other case	<div data-bbox="922 775 1042 888" data-label="Text"> <p>X of 1865. V of 1873. V of 1881. VII of 1889.</p> </div> <p>The same duty as a Bond (No. 15) for such amount.</p> <p>Five rupees.</p>
3. Adoption-Deed , that is to say, any instrument (other than a will) recording an adoption or conferring or purporting to confer an authority to adopt.	Ten rupees.
Advocata. See Entry as an Advocate (No. 30).	
4. Affidavit , including an affirmation or declaration in the case of persons by law allowed to affirm or declare instead of swearing. Exemptions. Affidavit or declaration in writing when made— ³ [(a) as a condition of enrolment under the ² Indian Army Act, 1911], ⁴ [or the ⁵ Indian Air Force Act, 1932];	One rupee.

¹These Acts have been repealed and re-enacted by the Indian Succession Act, 1925 (XXXIX of 1925), except section 13 of the Succession Certificate Act, 1889.

²These words and figure were substituted for the words "(a) as a condition of enlistment under the Indian Articles of War" by sec. 2 and Schedule I of the Repealing and Amending Act, 1928 (XVIII of 1928).

³See now the Army Act, 1950 (XLVI of 1950).

⁴These words and figure were inserted by sec. 130 and the Sch. of the Indian Air Force Act, 1932 (XIV of 1932).

⁵See now the Air Force Act, 1950 (XLV of 1950).

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I.—*contd.*

Description of Instrument.	Proper Stamp-duty.
<p>4. Affidavit—<i>concl'd.</i></p> <p style="text-align: center;"><i>Exemptions—concl'd.</i></p> <p>(b) for the immediate purpose of being filed or used in any Court or before the officer of any Court; or</p> <p>(c) for the sole purpose of enabling any person to receive any pension or charitable allowance.</p>	
<p>15. Agreement or Memorandum of An Agreement—</p> <p>(a) if relating to the sale of a bill of exchange;</p> <p>(b) if relating to the sale of a Government security or share in an incorporated company or other body corporate;</p> <p>(c) if not otherwise provided for</p> <p style="text-align: center;"><i>Exemptions.</i></p>	
<p>Agreement or Memorandum of Agreement—</p> <p>(a) for or relating to the sale of goods or merchandise exclusively, not being a Note or Memorandum chargeable under No. 43;</p> <p>(b) made in the form of tenders to the ²[Central Government] for or relating to any loan;</p> <p style="text-align: center;">3* * *</p>	<p>Two annas.</p> <p>Subject to a maximum of ten rupees, one anna for every Rs. 10,000 or part thereof of the value of the security or share.</p> <p>Eight annas.</p>
<p>Agreement to Lease, See Lease (No. 35).</p>	
<p>46. Agreement Relating to Deposit of Titil-deeds. Pawn or Pledge, that is to say, any instrument evidencing an agreement relating to—</p> <p>(1) the deposit of title-deeds or instruments constituting or being evidence of the title to any property whatever (other than a marketable security), or</p>	

¹This article was substituted for the original article by sec. 3(i) of the Indian Stamp (Amendment) Act, 1910 (VI of 1910).

²These words were substituted for the words "Government of India" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³Clause (c) was omitted by para. 3 and the 1st Schedule of the Adaptation of Laws Order, 1950.

⁴This article was substituted for the original article by sec. 8(1) of the Indian Stamp (Amendment) Act, 1904 (XV of 1904).

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I.—*contd.*

Description of Instrument.	Proper Stamp-duty.
6. Agreement Relating to Deposit of Title-deed, Pawn or Pledge—<i>concl'd.</i>	
(2) the pawn or pledge of movable property where such deposit, pawn or pledge has been made by way of security for the repayment of money advanced or to be advanced by way of loan or an existing or future debt—	
(a) if such loan or debt is repayable on demand or more than three months from the date of the instrument evidencing the agreement;	The same duty as a Bill of Exchange [No. 13 (b)] for the amount secured.
(b) if such loan or debt is repayable not more than three months from the date of such instrument.	Half the duty payable on a Bill of Exchange [No. 13 (b)] for the amount secured.
<i>Exemption.</i>	
Instrument of pawn or pledge of goods if unattested.	
7. Appointment in Execution of a Power. whether of trustees or of property, moveable or immoveable, where made by any writing not being a Will.	Fifteen rupees.
8. APPRAISEMENT OR VALUATION made otherwise than under an order of the Court in the course of a suit—	
(a) where the amount does not exceed Rs. 1,000	The same duty as a Bond (No. 15). for such amount.
(b) in any other case	Five rupees.
<i>Exemptions.</i>	
(a) Appraisement or valuation made for the information of one party only, and not being in any manner obligatory between parties either by agreement or operation of law.	
(b) Appraisement of crops for the purpose of ascertaining the amount to be given to a landlord as rent.	
9. Apprenticeship—Deed, including every writing relating to the service or tuition of any apprentice, clerk or servant, placed with any master to learn any profession, trade or employment, not being Articles of Clerkship (No. 11).	Five rupees.

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I.—*contd.*

	Description of Instrument.	Proper Stamp-duty.
	9. Apprenticeship—Deed— <i>concl'd.</i>	
	<i>Exemption.</i>	
XIX of 1850.	Instruments of apprenticeship executed by a Magistrate under the Apprentices Act, 1850, or by which a person is apprenticed by or at the charge of any public charity.	
	10. Articles of Association of a Company ...	Twenty-five rupees.
	<i>Exemption.</i>	
VI of 1882.	Articles of any Association not formed for profit and registered under section 26 of the Indian Companies Act, 1882. ¹	
	<i>See also</i> Memorandum of Association of a Company (No. 39).	
	11. Articles of Clerkship or contract whereby any person first becomes bound to serve as a clerk in order to his admission as an attorney in any High Court.	Two hundred and fifty rupees.
	Assignment. <i>See</i> Conveyance (No. 23), Transfer (No. 62), and Transfer of Lease (No. 63), as the case may be.	
	Attorney, <i>See</i> Entry as an Attorney (No. 30), and Power of Attorney (No. 48).	
	Authority to Adopt. <i>See</i> Adoption-Deed (No. 3).	
	12. Award, that is to say, any decision in writing by an arbitrator or umpire, not being an award directing a partition, on a reference made otherwise than by an order of the Court in the course of a suit—	
	(a) where the amount or value of the property to which the award relates as set forth in such award does not exceed Rs. 1,000;	The same duty as a Bond (No. 15) for such amount.
	(b) in any other case	Five rupees.
	<i>Exemption.</i>	
Bom. Act VI of 1873. Bom. Act III of 1874.	Award under the Bombay District Municipal Act, 1873 ² , section 81, or the Bombay Hereditary Offices Act, 1874, section 18.	
	¹ <i>See</i> now the Companies Act, 1956 (I of 1956).	
	² <i>See</i> now the Bombay District Municipal Act, 1901 (Bom. Act III of 1901).	

of 1899.]

(Schedule I.—Stamp-duty on Instrument's.)

SCHEDULE I.—*contd.*

Description of Instrument.	Proper Stamp-duty.
13. Bill of Exchange [as defined by s. 2 (2) ¹ * * *] not being a Bond, bank-note or currency-note—	
² * * * * *	
³ (b) where payable otherwise than on demand—	
(i) where payable not more than three months after date or sight—	
if the amount of the bill or note does not exceed Rs. 500.	One rupee ⁴ [twenty-five naye paise.]
If it exceeds Rs. 500 but does not exceed Rs. 1,000.	Two rupees ⁵ [fifty naye paise.]
and for every additional Rs. 1,000 or part thereof in excess of Rs. 1,000.	Two rupees ⁵ [fifty naye paise.]
(ii) where payable more than three months but not more than six months after date or sight—	
if the amount of the bill or note does not exceed Rs. 500.	Two rupees ⁵ [fifty naye paise.]
if it exceeds Rs. 500 but does not exceed Rs. 1,000.	Five rupees.
and for every additional Rs. 1,000 or part thereof in excess of Rs. 1,000.	Five rupees.
(iii) where payable more than six months but not more than nine months after date or sight—	
if the amount of the bill or note does not exceed Rs. 500.	Three rupees ⁶ [seventy-five naye paise.]
if it exceeds Rs. 500 but does not exceed Rs. 1,000.	Seven rupees ⁶ [fifty naye paise.]
and for every additional Rs. 1,000 or part thereof in excess of Rs. 1,000.	Seven rupees ⁶ [fifty naye paise.]
(iv) where payable more than nine months but not more than one year after date or sight—	
if the amount of the bill or note does not exceed Rs. 500.	Five rupees.

¹The word, figure and brackets "and (3)" were omitted by sec. 5 of the Indian Finance Act, 1927 (V of 1927).

²The words, letter and brackets "(a) where payable on demand..... one anna" were omitted, *ibid.*

³Items (b) and (c) of entry 13 were substituted by sec. 4 and the Second Schedule of the Finance (No. 2) Act, 1956 (LXXVI of 1956).

⁴Substituted for the words "four annas" by sec. 13 of the Indian Stamp (Amendment) Act, 1958 (XIX of 1958).

⁵Substituted for the words "eight annas" by sec. 13, *ibid.*

⁶Substituted for the words "twelve annas" by sec. 13, *ibid.*

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I.—*contd.*

Description of Instrument.	Proper Stamp-duty.
13. Bill of Exchange— <i>concl'd.</i>	
if it exceeds Rs. 500 but does not exceed Rs. 1,000.	Ten rupees.
and for every additional Rs. 1,000 or part thereof in excess of Rs. 1,000.	Ten rupees.
¹ (c) where payable at more than one year after date or sight—	
if the amount of the bill or note does not exceed Rs. 500.	Ten rupees.
if it exceeds Rs. 500 but does not exceed Rs. 1,000.	Twenty rupees.
and for every additional Rs. 1,000 or part thereof in excess of Rs. 1,000.	Twenty rupees.
14. Bill of Lading (including a through bill of lading)	² [Twenty-five naye paise.]
	N.B.—If a bill of lading is drawn in parts, the proper stamp therefor must be borne by each one of the set.
<i>Exemptions.</i>	
(a) Bill of lading when the goods therein described are received at a place within the limits of any port as defined under the Indian Ports Act, 1889, ³ and are to be delivered at another place within the limits of the same port.	
(b) Bill of lading when executed out of '[India]' and relating to property to be delivered in '[India]'. X of 1889.	

¹Items (b) and (c) of entry 13 were substituted by sec. 4 and the Second Schedule of the Finance (No. 2) Act, 1956 (LXXVI of 1956).⁹

²Substituted for the words "four annas" by sec. 13 of the Indian Stamp (Amendment) Act, 1958 (XIX of 1958).

³See now the Indian Ports Act, 1908 (XV of 1908).

⁴See foot-note 1 on page 753, *ante*.

of 1899.]

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I.—*contd.*

Description of Instrument.	Proper Stamp-duty.	
15. Bond [as defined by section 2(5)] not being a DEBENTURE (No. 27), and not being otherwise provided for by this Act, or by the Court-fees Act, 1870,—		VII of 1870.
where the amount or value secured does not exceed Rs. 10	Two annas.	
where it exceeds Rs. 10 and does not exceed Rs. 50	Four annas.	
where it exceeds Rs. 50 and does not exceed Rs. 100	Eight annas.	
where it exceeds Rs. 100 and does not exceed Rs. 200	One rupee.	
where it exceeds Rs. 200 and does not exceed Rs. 300	One rupee eight annas.	
where it exceeds Rs. 300 and does not exceed Rs. 400	Two rupees.	
where it exceeds Rs. 400 and does not exceed Rs. 500	Two rupees eight annas.	
where it exceeds Rs. 500 and does not exceed Rs. 600	Three rupees.	
where it exceeds Rs. 600 and does not exceed Rs. 700	Three rupees eight annas.	
where it exceeds Rs. 700 and does not exceed Rs. 800	Four rupees.	
where it exceeds Rs. 800 and does not exceed Rs. 900	Four rupees eight annas.	
where it exceeds Rs. 900 and does not exceed Rs. 1,000;	Five rupees.	
and for every Rs. 500 or part thereof in excess of Rs. 1,000 .	Two rupees eight annas.	
See ADMINISTRATION BOND (No. 2) BOTTOMRY BOND (No. 16) CUSTOMS-BOND (No. 26). INDEMNITY-BOND (No. 34). RESPONDENTIA BOND (No. 56). SECURITY BOND (No. 57).		

Exemptions.

Bond, when executed by—

- (a) headmen nominated under rules framed in accordance with the Bengal Irrigation Act, 1876, section 99, for the due performance of their duties under that Act;
- (b) any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem.

**Ben. Act
III of
1876.**

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I.—*contd.*

Description of Instrument.	Proper Stamp-duty.
16. Bottomry Bond that is to say, any instrument whereby the master of a sea-going ship borrows money on the security of the ship to enable him to preserve the ship or prosecute her voyage.	The same duty as a Bond (No. 15) for the same amount.
17. Cancellation —Instrument of ¹ (including any instrument by which any instrument previously executed is cancelled), if attested and not otherwise provided for.	Five rupees.
See also RELEASE (No. 55), REVOCATION OF SETTLEMENT (No. 58-B), SURRENDER OF LEASE (No. 61), REVOCATION OF TRUST (No. 64-B).	
18. Certificate of Sale (in respect of each property put up as a separate lot and sold) granted to the purchaser of any property sold by public auction by a Civil or Revenue-officer—	Two annas.
(a) where the purchase-money does not exceed Rs. 10	Four annas.
(b) where the purchase-money exceeds Rs. 10 but does not exceed Rs. 25;	The same duty as a Conveyance (No. 23) for a consideration equal to the amount of the purchase-money only.
(c) in any other case	¹ [Two annas.]
19 Certificate or Other Document evidencing the right or title of the holder thereof, or any other person, either to any shares, scrip or stock in or of any incorporated company or other body corporate, or to become proprietor of shares, scrip or stock in or of any such company or body.	One rupee.
See also LETTER OF ALLOTMENT OF SHARES (No. 36).	
20. Charter-Party , that is to say, any instrument (except an agreement for the hire of a tug-steamer) whereby a vessel or some specified principal part thereof is let for the specified purposes of the charterer, whether it includes a penalty clause or not.	
2* * * * *	

¹These words were substituted for the words "one anna" by sec. 2 of the Indian Stamp (Amendment) Act, 1923 (XLIII of 1923).

²Article 21 was omitted by sec. 5 of the Indian Finance Act, 1927 (V of 1927).

of 1899.]

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I.—*contd.*

Description of Instrument.

22. Composition-Deed , that is to say, any instrument executed by a debtor whereby he conveys his property for the benefit of his creditors, or whereby payment of a composition or dividend on their debts is secured to the creditors, or whereby provision is made for the continuance of the debtor's business, under the supervision of inspectors or under letters of license, for the benefit of his creditors.	Ten rupees.
23. Conveyance [as defined by section 2 (10)] not being a TRANSFER charged or exempted under No. 62.—	
where the amount or value of the consideration for such conveyance as set forth therein does not exceed Rs. 50:	Eight annas.
where it exceeds Rs. 50 but does not exceed Rs. 100	One rupee.
where it exceeds Rs. 100 but does not exceed Rs. 200	Two rupees.
where it exceeds Rs. 200 but does not exceed Rs. 300	Three rupees.
where it exceeds Rs. 300 but does not exceed Rs. 400	Four rupees.
where it exceeds Rs. 400 but does not exceed Rs. 500	Five rupees.
where it exceeds Rs. 500 but does not exceed Rs. 600	Six rupees.
where it exceeds Rs. 600 but does not exceed Rs. 700	Seven rupees.
where it exceeds Rs. 700 but does not exceed Rs. 800	Eight rupees.
where it exceeds Rs. 800 but does not exceed Rs. 900	Nine rupees.
where it exceeds Rs. 900 but does not exceed Rs. 1,000	Ten rupees.
and for every Rs. 500 or part thereof in excess of Rs. 1,000.	Five rupees.

Exemption.

Assignment of copyright by entry made under the Indian Copyright Act, 1847 ¹ , section 5.	XX of 1874.
Co-Partnership-Deed See PARTNERSHIP (No. 46).	
24. Copy or Extract , certified to be a true copy or extract, by or order of any public officer and not chargeable under the law for the time being in force relating to court-fees—	
(i) if the original was not chargeable with duty or if the duty with which it was chargeable does not exceed one rupee;	Eight annas.
(ii) in any other case	One rupee.

¹See now the Indian Copyright Act, 1914 (III of 1913).

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I.—*contd.*

Description of Instrument.	Proper Stamp-duty.
24. Copy or Extract— <i>concl'd.</i>	
<i>Exemptions.</i>	
(a) Copy of any paper which a public officer is expressly required by law to make or furnish for record in any public office or for any public purpose.	
¹ [(b) Copy of, or extract from, any register relating to births, baptisms, namings, dedications, marriages, ² divorces, deaths or burials].	
25. Counterpart or Duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid,—	
(a) if the duty with which the original instrument is chargeable does not exceed one rupee;	The same duty as is payable on the original.
(b) in any other case	One rupee.
<i>Exemption.</i>	
Counterpart of any lease granted to a cultivator, when such lease is exempted from duty.	
26. Customs-Bond—	
(a) where the amount does not exceed Rs. 1,000	The same duty as a Bond (No. 15) for such amount.
(b) in any other case	Five rupees.
³ 27. Debenture. (whether a mortgage debenture or not), being a marketable security transferable—	
(a) by endorsement or by a separate instrument of transfer—	
where the amount or value does not exceed Rs. 10	⁴ [Twenty naye paise.]
where it exceeds Rs. 10 and does not exceed Rs. 50	⁵ [Forty naye paise.]

¹This clause was substituted for clauses (b) and (c) by sec. 7(I) of the Indian Stamp (Amendment) Act, 1906 (V of 1906).

²The word "divorces" was inserted by sec. 2 and Schedule I of the Repealing and Amending Act, 1914 (X of 1914).

³Article 27, which was substituted for the original article by sec. 3 (iii) of the Indian Stamp (Amendment) Act, 1910 (VI of 1910), was further substituted by sec. 7 (ii) of the Indian Stamp (Amendment) Act, 1955 (XLIII of 1955).

⁴Substituted for the words "Three annas" by sec. 13 of the Indian Stamp (Amendment) Act, 1958 (XIX of 1958).

⁵Substituted for the words "Six annas" by sec. 13, *ibid.*

of 1899.]

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I.—*contd.*

Description of Instrument.				Proper Stamp-duty.
where it exceeds Rs. 50 and does not exceed Rs. 100 . . .				¹ [Seventy-five naye paise.]
Ditto	100	ditto	200 . . .	One rupee ² [fifty naye paise.]
Ditto	200	ditto	300 . . .	Two rupees ³ [twenty-five naye paise.]
Ditto	300	ditto	400 . . .	Three rupees.
Ditto	400	ditto	500 . . .	Three rupees ¹ [seventy-five naye paise.]
Ditto	500	ditto	600 . . .	Four rupees ² [fifty naye paise.]
Ditto	600	ditto	700 . . .	Five rupees ³ [twenty-five naye paise.]
Ditto	700	ditto	800 . . .	Six rupees.
Ditto	800	ditto	900 . . .	Six rupees ¹ [seventy-five naye paise.]
where it exceeds Rs. 900 and does not exceed Rs. 1,000 . . .				Seven rupees ² [fifty naye paise.]
and for every Rs. 500 or part thereof in excess of Rs. 1,000 . . .				Three rupees ¹ [seventy-five naye paise.]
(b) by delivery—				
where the amount or value of the consideration for such debenture as set forth therein does not exceed Rs. 50.				¹ [Seventy-five naye paise.]
where it exceeds Rs. 50 but it does not exceed Rs. 100 . . .				One rupee. ² [fifty naye paise.]
Ditto	100	ditto	200 . . .	Three rupees.
Ditto	200	ditto	300 . . .	Four rupees. ³ [fifty naye paise.]

¹Substituted for the words "twelve annas" by sec. 13 of the Indian Stamp (Amendment) Act, 1958 (XIX of 1958).

²Substituted for the words "eight annas" by sec. 13, *ibid.*

³Substituted for the words "four annas" by sec. 13, *ibid.*

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I.—*contd.*

Description of Instrument.				Proper Stamp-duty.
where it exceeds Rs. 300 but does not exceed Rs. 400				Six rupees.
Ditto	400	ditto	500	Seven rupees [fifty naye paise.]
Ditto	500	ditto	600	Nine rupees.
Ditto	600	ditto	700	Ten rupees [fifty naye paise.]
Ditto	700	ditto	800	Twelve rupees.
Ditto	800	ditto	900	Thirteen rupees [fifty naye paise.]
Ditto	900	ditto	1,000	Fifteen rupees.
and for every Rs. 500 or part thereof in excess of Rs. 1,000				Seven rupees [fifty naye paise.]

Explanation—The term “Debenture” includes any interest coupons attached thereto but the amount of such coupons shall not be included in estimating the duty.

Exemption.

A debenture issued by an incorporated company or other body corporate in terms of a registered mortgage deed, duly stamped in respect of the full amount of debentures to be issued thereunder, whereby the company or body borrowing makes over, in whole or in part, their property to trustees for the benefit of the debenture holders:

Provided that the debentures so issued are expressed to be issued in terms of the said mortgage-deed.

of 1899.]

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I.—*contd.*

Description of Instrument.

Proper
Stamp-duty.

Declaration of any trust. See Trust (No. 64).

28. **Delivery order in respect of goods,** that is to say, any instrument entitling any person therein named, or his assigns, or the holder thereof, to the delivery of any goods lying in any dock or port, or in any warehouse in which goods are stored or deposited on rent or hire, or upon any wharf, such instrument being signed by or on behalf of the owner of such goods, upon the sale or transfer of the property therein, when such goods exceed in value twenty rupees. **One anna.**

Deposit of title deeds. ¹[See Agreement relating to Deposit of title-deeds, pawn or pledge (No. 6).]

Dissolution of partnership. See PARTNERSHIP (No. 46).

29. **Divorce—** Instrument of, that is to say, any instrument by which any person effects the dissolution of his marriage. **One rupee.**

Dower— Instrument of. See SETTLEMENT (No. 58).

¹These words and figure were substituted for the words and figure "See Agreement by way of equitable mortgage (No. 6)" by sec. 8(2) of the Indian Stamp (Amendment) Act, 1904 (XV of 1904).

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I.

XXXVIII
of 1926.IX of
1884.

Description of Instrument.	Proper Stamp-duty.
Duplicate— See COUNTERPART (No. 25).	
30. Entry as an Advocate, Vakil or Attorney on the roll of any High Court ¹ [under the Indian Bar Councils Act, 1926, or] in exercise of powers conferred on such Court by Letters Patent or by the ² Legal Practitioners Act, 1884—	
(a) in the case of an Advocate or Vakil ...	Five hundred rupees.
(b) in the case of an Attorney ...	Two hundred and fifty rupees.
<i>Exemption.</i>	
Entry of an advocate, vakil or attorney on the roll of any High Court when he has previously been enrolled in a High Court.	
* * * * *	
Exchange of Property— Instrument of ...	The same duty as a Conveyance (No. 23) for a consideration equal to the value of the property of greatest value as set forth in such instrument.
Extract. See COPY (No. 24).	
32. Further Charge— Instrument of, that is to say, any instrument imposing a further charge on mortgaged property—	
(a) when the original mortgage is one of the description referred to in clause (a) of Article No. 40 (that is, with possession);	The same duty as a Conveyance (No. 23) for a consideration equal to the amount of the further charge secured by such instrument.

¹These words and figure were inserted by sec. 19 and the Sch. of the Indian Bar Councils Act, 1926 (XXXVIII of 1926).²Since repealed.³The words and figures "EQUITABLE MORTGAGE. See AGREEMENT by way of EQUITABLE MORTGAGE (No. 6)" which were repealed by sec. 8(3) of the Indian Stamp (Amendment) Act, 1904 (XV of 1904), are omitted.

of 1899.]

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I.—*contd.*

Description of Instrument.	Proper Stamp-duty.
32. Further Charge — <i>concl'd.</i>	
(b) when such mortgage is one of the description referred to in clause (b) of Article No. 40 (that is, without possession)—	
(i) if at the time of execution of the instrument of further charge possession of the property is given, or agreed to be given under such instrument;	The same duty as a Conveyance (No. 23) for a consideration equal to the total amount of the charge (including the original mortgage and any further charge already made) less the duty already paid on such original mortgage and further charge.
(ii) if possession is not so given	The same duty as a Bond (No. 15) for the amount of the further charge secured by such instrument.
33. Gift —Instrument of, not being a SETTLEMENT (No. 58) OR WILL OR TRANSFER (No. 62).	The same duty as a Conveyance (No. 23) for a consideration equal to the value of the property as set forth in such instrument.
Hiring Agreement or agreement for service. <i>See</i> AGREEMENT (No. 5).	
34. Indemnity-Bond	The same duty as a Security-Bond (No. 57) for the same amount.
Inspectorship Deed. <i>See</i> COMPOSITION-DEED (No. 22).	
Insurance. <i>See</i> POLICY OF INSURANCE (No. 47).	
35. Lease , including an under-lease or sub-lease and any agreement to let or sub-let—	
(a) where by such lease the rent is fixed and no premium is paid or delivered—	
(i) where the lease purports to be for a term of less than one year;	The same duty as a Bond (No. 15) for the whole amount payable or deliverable under such lease.

[Act II

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I.—*contd.*

Description of Instrument.	Proper Stamp-duty.
35. <i>Lease—contd.</i>	
(ii) where the lease purports to be for a term of not less than one year but not more than three years;	The same duty as a B o n d (No. 15) for the amount or value of the average annual rent reserved.
(iii) where the lease purports to be for a term in excess of three years;	The same duty as a Conveyance (No. 23) for a c o n s i d e r - a t i o n equal to the amount or value of the average annual rent reserved.
(iv) where the lease does not purport to be for any definite term;	The same duty as a Conveyance (No. 23) for a c o n s i d e r - a t i o n equal to the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long.
(v) where the lease purports to be in perpetuity;	The same duty as a Conveyance (No. 23) for a c o n s i d e r - a t i o n equal to one-fifth of the whole amount of rents which would be paid or delivered in respect of the first fifty years of the lease.
(b) where the lease is granted for a fine or premium or for money advanced and where no rent is reserved;	The same duty as a Conveyance (No. 23) for a c o n s i d e r - a t i o n equal to the amount or value of such fine or premium or advance as set forth in the lease.

of 1899.]

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I.—*contd.*

Description of Instrument.	Proper Stamp-duty.
<p>35. Lease—concl'd.</p> <p>(c) where the lease is granted for a fine or premium or for money advanced in addition to rent reserved.</p>	<p>The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease, in addition to the duty which would have been payable on such lease if no fine or premium or advance had been paid or delivered:</p> <p>Provided that, in any case when an agreement to lease is stamped with the <i>ad valorem</i> stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed eight annas.</p>
<p style="text-align: center;"><i>Exemptions.</i></p> <p>(a) Lease, executed in the case of a cultivator and for the purposes of cultivation (including a lease of trees for the production of food or drink) without the payment or delivery of any fine or premium, when a definite term is expressed and such term does not exceed one year, or when the average annual rent reserved does not exceed one hundred rupees.</p> <p style="text-align: center;">* * * * *</p> <p>36. Letter of Allotment of Shares in any company or proposed company, or in respect of any loan to be raised by any company or proposed company.</p> <p><i>See also</i> CERTIFICATE OR OTHER DOCUMENT (No. 19).</p>	<p>*[Two annas.]</p>

¹Exemption (b) was omitted by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the words "one anna" by sec. 2 of the Indian Stamp (Amendment) Act, 1923 (XLIII of 1923).

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I.—*contd.*

Description of Instrument.	Proper Stamp-duty.
37. Letter of Credit, that is to say, any instrument by which one person authorises another to give credit to the person in whose favour it is drawn.	[Fifteen naye paise.]
Letter of Guarantee. See AGREEMENT (No. 5).	
38. Letter of Licence, that is to say, any agreement between a debtor and his creditors that the latter shall, for a specified time, suspend their claims and allow the debtor to carry on business at his own discretion.	Ten rupees.
39. Memorandum of Association of a Company—	
(a) if accompanied by articles of association under section 37 of the Indian Companies Act, 1882 ¹ ;	Fifteen rupees.
(b) if not so accompanied	Forty rupees.
<i>Exemption.</i>	
Memorandum of any association not formed for profit and registered under section 26 of the Indian Companies Act, 1882 ² .	
40. Mortgage Deed, not being ³ [AN AGREEMENT RELATING TO DEPOSIT OF TITLE-DEEDS, PAWN OR PLEDGE (No. 6)], BOTTOMRY BOND (No. 16), MORTGAGE OF A CROP (No. 41), RESPONDENTIA BOND (No. 56), OR SECURITY-BOND (No. 57)—	
(a) when possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given;	The same duty as a Conveyance (No. 23) for a consideration equal to the amount secured by such deed.
(b) when * * * * possession is not given or agreed to be given as aforesaid.	The same duty as a Bond (No. 15) for the amount secured by such deed.
<i>Explanation.</i> —A mortgagor who gives to the mortgagee a power-of-attorney to collect rents or a lease of the property mortgaged or part thereof, is deemed to give possession within the meaning of this article.	

¹Substituted for the words "two annas" by sec. 13 of the Indian Stamp (Amendment) Act, 1958 (XIX of 1958).

²See now the Companies Act, 1956 (I of 1956).

³These words and figure were substituted for the words and figure "An agreement to mortgage (No. 6)" by sec. 8 (4) (a) of the Indian Stamp (Amendment) Act, 1904 (XV of 1904).

⁴The words "at the time of execution" which were repealed by sec. 8(4) (b), *ibid*, are omitted.

of 1899.]

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I.—*contd.*

Description of Instrument.

Proper
Stamp-duty.

40. **Mortgage-Deed—*concl'd.***

- (c) when a collateral or auxiliary or additional or substituted security, or by way of further assurance for the above-mentioned purpose where the principal or primary security is duly stamped—
- for every sum secured not exceeding Rs. 1,000 Eight annas.
- and for every Rs. 1,000 or part thereof secured in excess of Rs. 1,000. Eight annas.

Exemptions.

- (1) Instruments executed by persons taking advances under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884, or by their sureties as security for the repayment of such advances. XIX of 1883.
- (2) Letter of hypothecation accompanying a bill of exchange. XII of 1884.

1* * * * *

41. **Mortgage of a Crop**, including any instrument evidencing an agreement to secure the repayment of a loan made upon any mortgage of a crop, whether the crop is or is not in existence at the time of the mortgage—

- (a) when the loan is repayable not more than three months from the date of the instrument—
- for every sum secured not exceeding Rs. 200; One anna.
- and for every Rs. 200 or part thereof secured in excess of Rs. 200; One anna.
- (b) when the loan is repayable more than three months, but not more than ²[eighteen months], from the date of the instrument—
- for every sum secured exceeding Rs. 100; ... ³[Two annas.]
- and for every Rs. 100 or part thereof secured in excess of Rs. 100. ... ³[Two annas.]

¹The exemption "(3) Instrument of pledge or pawn of goods if unattested" which was repealed by sec. 8(4)(c) of the Indian Stamp (Amendment) Act, 1904 (XV of 1904), is omitted.

²These words were substituted for the words "one year" by sec. 7(2) of the Indian Stamp (Amendment) Act, 1906 (V of 1906).

³These words were substituted for the words "four annas" by sec. 8(5) of the Indian Stamp (Amendment) Act, 1904 (XV of 1904).

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I.—*contd.*

Description of Instrument.	Proper Stamp-duty.
<p>42. Notarial Act, that is to say, any instrument, endorsement, note, attestation, certificate or entry not being a Protest (No. 50) made or signed by a Notary Public in the execution of the duties of his office, or by any other person lawfully acting as a Notary Public.</p> <p><i>See also</i> PROTEST OF BILL OR NOTE (No. 50).</p>	<p>One rupee.</p>
<p>43. Note or Memorandum sent by a Broker or Agent to his principal intimating the purchase or sale on account of such principal—</p> <p>(a) of any goods exceeding in value twenty rupees;</p> <p>(b) of any stock or marketable security exceeding in value twenty rupees.</p>	<p>Two annas.</p> <p>Subject to a maximum of ten rupees, one anna for every Rs. 10,000 or part thereof of the value of the stock or security.</p>
<p>44. Note of Protest by the Master of a Ship</p> <p><i>See also</i> PROTEST BY THE MASTER OF A SHIP (No. 51).</p> <p>Order for the Payment of Money. <i>See</i> BILL OF EXCHANGE (No. 13).</p>	<p>Eight annas.</p>

¹Article 43 was substituted for the original article by sec. 3(iv) of the Indian Stamp (Amendment) Act, 1910 (VI of 1910).

of 1899.]

(Schedule I.—Stamp-duty on Instrument's.)


SCHEDULE I.—*contd.*

Description of Instrument.	Proper Stamp-duty.
45. Partition —Instrument of [as defined by section 2(15)].	The same duty as a Bond (No. 15) for the amount of the value of the separated share or shares of the property.
N.B. —The largest share remaining after the property is partitioned (or, if there are two or more shares of equal value and not smaller than any of the other shares, then one of such equal shares) shall be deemed to be that from which the other shares are separated:	
Provided always that—	
(a) when an instrument of partition containing an agreement to divide property in severalty is executed and a partition is effected in pursuance of such agreement, the duty chargeable upon the instrument effecting such partition shall be reduced by the amount of duty paid in respect of the first instrument, but shall not be less than eight annas:	
(b) where land is held on Revenue Settlement for a period not exceeding thirty years and paying the full assessment, the value for the purpose of duty shall be calculated at not more than five times the annual revenue:	
(c) where a final order for effecting a partition passed by any Revenue-authority or any Civil Court, or an award by an arbitrator directing a partition, is stamped with the stamp required for an instrument of partition in pursuance of such order or award is subsequently executed, the duty on such instrument shall not exceed eight annas.	
46. Partnership —	
A.—Instrument of—	
(a) where the capital of the partnership does not exceed Rs. 500;	Two rupees eight annas.
(b) in any other case	Ten rupees.
B.—Dissolution of	Five rupees.
¹ [Pawn or Pledge. See AGREEMENT RELATING TO DEPOSIT OF TITLE-DEEDS, PAWN OR PLEDGE (No. 6).]	

¹This entry was inserted by sec. 8(6) of the Indian Stamp (Amendment) Act, 1904 (XV of 1904).

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I.—contd.

Description of Instrument.	Proper Stamp-duty.	
47. Policy of Insurance— ¹ A.—SEA-INSURANCE (see section 7)— (1) for or upon any voyage—	If drawn singly. 	If drawn in duplicate, for each part.
(i) where the premium or consideration does not exceed the rate of * * * one-eighth <i>per centum</i> of the amount insured by the policy;		
(ii) in any other case, in respect of every full sum of ⁵ [one thousand five hundred rupees]and also any fractional part of ⁵ [one thousand five hundred rupees] insured by the policy;	³ [Ten naye paise.]	⁴ [Five naye paise.]
(2) for time— (iii) in respect of every full sum of one thousand rupees and also fractional part of one thousand rupees insured by the policy— where the insurance shall be made for time not exceeding six months;	⁶ [Fifteen naye paise.]	³ [Ten naye paise.]
where the insurance shall be made for any time exceeding six months and not exceeding twelve months.	⁷ [Twenty- five naye paise.]	⁶ [Fifteen naye paise.]
¹ B.— ⁸ [FIRE INSURANCE and other classes of Insurance, not elsewhere included in this article, covering goods, merchandise, personal effects, crops, and other property against loss or damage;]—	⁹ [Fifty naye paise.] One rupee.	One-half of the duty payable in respect of the original policy in addition to the amount, if any, chargeable under No. 53.
(1) in respect of an original policy— (i) when the sum insured does not exceed Rs. 5,000; (ii) in any other case; ... and (2) in respect of each receipt for any payment of a premium on any renewal of an original policy.		

¹These divisions A and B were substituted for the original divisions A and B by sec. 7(3) of the Indian Stamp (Amendment) Act, 1906 (V of 1906).

²The words "fifteen naye paise or " were omitted by sec. 16(a) of the Finance Act, 1961 (XIV of 1961).

³Substituted for the words "One anna" by sec. 13 of the Indian Stamp (Amendment) Act, 1958 (XIX of 1958).

⁴Substituted for the words "Half an anna" by sec. 13, *ibid*.

⁵Substituted for the words "One thousand rupees" by sec. 2 and Schedule I of the Repealing and Amending Act, 1928 (XVIII of 1928).

⁶Substituted for the words "Two annas" by sec 13 of the Indian Stamp (Amendment) Act, 1958 (XIX of 1958).

⁷Substituted for the words "Four annas" by sec. 13, *ibid*.

⁸These words were substituted for the word "Fire-Insurance" by sec. 2 (ii) of the Indian Stamp (Amendment) Act, 1923 (XLII of 1923).

⁹Substituted for the words "Eight annas" by sec. 13 of the Indian Stamp (Amendment) Act, 1958 (XIX of 1958).

of 1899.]

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I.—*contd.*

Description of Instrument.	Proper Stamp-duty.
47. Policy of Insurance— <i>contd.</i>	
C.—ACCIDENT AND SICKNESS-INSURANCE—	
(a) against railway accident, valid for a single journey only.	¹ [Ten naye paise.]
<i>Exemption.</i>	
When issued to a passenger travelling by the intermediate or the third class in any railway.	
(b) in any other case—for the maximum amount which may become payable in the case of any single accident or sickness where such amount does not exceed Rs. 1,000, and also where such amount exceed Rs. 1,000, for every Rs. 1,000 or part thereof.	² [Fifteen naye paise.]
	³ [Provided that, in case of a policy of insurance against death by accident when the annual premium payable does not exceed ¹ [Rs. 2.50] per Rs. 1,000, the duty on such instrument shall be ¹ [ten naye paise] for every Rs. 1,000 or part thereof of the maximum amount which may become payable under it.]
⁴ [CC.—Insurance by way of indemnity against liability to pay damages on account of accidents to workmen employed by or under the insurer or against liability to pay compensation under the Workmen's Compensation Act, 1923, for every Rs. 100 or part thereof payable as premium.	¹ [Ten naye paise.]

VIII of 1923.

¹Substituted for the words "One anna" and "Rs. 2-8", respectively by sec. 13 of the Indian Stamp (Amendment) Act, 1958 (XIX of 1958).

²Substituted for the words "Two annas" by sec. 13, *ibid.*

³This proviso was inserted by sec. 2 and Schedule I of the Repealing and Amending Act, 1928 (XVII of 1928).

⁴This division was inserted by sec. 2 of the Indian Stamp (Amendment) Act, 1925 (XV of 1925).

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I.—*contd.*

Description of Instrument.	Proper Stamp-duty	
47. Policy of Insurance — <i>contd.</i>	If drawn singly.	If drawn in duplicate, for each part.
¹ [D.—LIFE INSURANCE ² [OR GROUP INSURANCE or other Insurance] not specifically provided for, except such a Re-Insurance as is described in Division E of this Article —		
(i) for every sum insured not exceeding Rs. 250;	⁴ [Fifteen naye paise.]	⁵ [Ten naye paise.]
(ii) for every sum insured exceeding Rs. 250 but not exceeding Rs. 500;	⁶ [Twenty-five naye paise.]	⁷ [Fifteen naye paise.]
(iii) for every sum insured exceeding Rs. 500 but not exceeding Rs. 1,000 and also for every Rs. 1,000 or part thereof in excess of Rs. 1,000.	⁶ [Forty naye paise.]	⁷ [Twenty naye paise.]
¹⁰ N.B.—If a policy of group insurance is renewed or otherwise modified whereby the sum insured exceeds the sum previously insured on which stamp duty has been paid, the proper stamp must be borne on the excess sum so insured.		

¹This division was substituted for the original division D by sec. 2 and Schedule I of the Repealing and Amending Act, 1928 (XVIII of 1928).

²Substituted for the words "or other Insurance" by sec. 7 (iii), (a) of the Indian Stamp (Amendment) Act, 1955 (XLIII of 1955).

³See foot-note 2 on page 813, *ante*.

⁴See foot-note 1 on page 813, *ante*.

⁵Substituted for the words "Four annas" by sec. 13 of the Indian Stamp (Amendment) Act, 1958 (XIX of 1958).

⁶Substituted for the words "Six annas" by sec. 13, *ibid*.

⁷Substituted for the words "Three annas" by sec. 13, *ibid*.

⁸This note was inserted by sec. 7 (iii) (b) of the Indian Stamp (Amendment) Act, 1955, (XLIII of 1955).

of 1899.]

(Schedule I.—Stamp-duty on Instrument's.)

SCHEDULE I.—*contd.*

Description of Instrument.	Proper Stamp-duty.
<p>47. Policy of Insurance—<i>concl'd.</i> D.—LIFE INSURANCE OR GROUP INSURANCE OR OTHER INSURANCE NOT SPECIFICALLY PROVIDED FOR, etc.—<i>concl'd.</i></p>	<p>One-quarter of the duty payable in respect of the original insurance but not less than ³[ten naye paise] or more than one rupee: ⁴Provided that if the total amount of duty payable is not a multiple of five naye paise, the total amount shall be rounded off to the next higher multiple of five naye paise.</p>
<p><i>Exemption.</i> Policies of life-insurance granted by the Director-General of Post Offices in accordance with rules for Postal Life-Insurance issued under the authority of the ¹[Central Government.] E.—RE-INSURANCE BY AN INSURANCE COMPANY, which has granted a POLICY ²[of the nature specified in division A or division B of this Article] with another company by way of indemnity or guarantee against the payment on the original insurance of a certain part of the sum insured thereby.</p>	
<p><i>General Exemption.</i> Letter of cover or engagement to issue a policy of insurance: Provided that, unless such letter or engagement bears the stamp prescribed by this Act for such policy, nothing shall be claimable thereunder, nor shall it be available for any purpose, except to compel the delivery of the policy therein mentioned.</p>	<p>Eight annas. Eight annas. One rupee.</p>
<p>48. Power-of-Attorney [as defined by section 2 (21)], not being a PROXY (No. 52),—</p>	
<p>(a) when executed for the sole purpose of procuring the registration of one or more documents in relation to a single transaction or for admitting execution of one or more such documents; (b) when required in suits or proceedings under the Presidency Small Cause Courts Act, 1882; (c) when authorising one person or more to act in a single transaction other than the case mentioned in clause (a);</p>	

XV of 1882.

¹The words "Central Government" were substituted for the words "Governor-General in Council" by paragraph 4(I) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the words "of Sea-Insurance for a policy of fire-insurance" by sec. 2 of the Indian Stamp (Amendment) Act, 1923 (XLIII of 1923).

³Substituted for the words "one anna" by sec. 13 of the Indian Stamp (Amendment) Act, 1958 (XIX of 1958).

⁴This proviso was inserted by sec. 16(b) of the Finance Act, 1961 (XIV of 1961).

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I.—*contd.*

Description of Instrument.	Proper Stamp-duty.
48. Power-of-Attorney — <i>concl'd.</i>	
(d) when authorising not more than five persons to act jointly and severally in more than one transaction or generally;	Five rupees.
(e) when authorising more than five but not more than ten persons to act jointly and severally in more than one transaction or generally;	Ten rupees.
(f) when given for consideration and authorising the attorney to sell any immovable property;	The same duty as a Conveyance (No. 23) for the amount of the consideration.
(g) in any other case	One rupee for each person authorised. <i>N.B.</i> —The term "registration" includes every operation incidental to registration under the Indian Registration Act, 1877 ¹ .
<i>Explanation.</i> —For the purposes of this Article more persons than one when belonging to the same firm shall be deemed to be one person.	
249. Promissory Note [as defined by section 2(22)]—	
(a) when payable on demand—	
(i) when the amount or value does not exceed Rs. 250;	*[Ten naye paise.]
(ii) when the amount or value exceeds Rs. 250 but does not exceed Rs. 1,000;	*[Fifteen naye paise.]
(iii) in any other case	*[Twenty-five naye paise.]
(b) when payable otherwise than on demand	The same duty as a Bill of Exchange (No. 13) for the same amount payable otherwise than on demand.
50. Protest of Bill or Note , that is to say, any declaration in writing made by a Notary Public, or other person lawfully acting as such, attesting the dishonour of a bill of exchange or promissory note.	One rupee.

¹See now the Indian Registration Act, 1908 (XVI of 1908).²This article was substituted for the original article by sec. 2 of the Indian Stamp (Amendment) Act, 1923 (XLIII of 1923).³Substituted for the words "one anna" by sec. 13 of the Indian Stamp (Amendment) Act, 1958 (XIX of 1958).⁴Substituted for the words "two annas" by sec. 13, *ibid.*⁵Substituted for the words "four annas" by sec. 13, *ibid.*

of 1899.]

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I.—*contd.*

Description of Instrument.	Proper Stamp-duty.
<p>51. Protest by the Master of a Ship, that is to say, any declaration of the particulars of her voyage drawn up by him with a view to the adjustment of losses or the calculation of averages, and every declaration in writing made by him against the characters or the consignees for not loading or unloading the ship, when such declaration is attested or certified by a Notary Public or other person lawfully acting as such. <i>See also</i> NOTE OF PROTEST BY THE MASTER OF A SHIP (No. 44).</p>	One rupee.
<p>52. Proxy empowering any person to vote at any one election of the members of a district or local board or of a body of municipal commissioners, or at any one meeting of (a) members of an incorporated company or other body corporate whose stock or funds is or are divided into shares and transferable, (b) a local authority, or (c) proprietors, members or contributors to the funds of any institution.</p>	¹[Fifteen paise.]
<p>53. Receipt [as defined by section 2(23)] for any money or other property the amount or value of which exceeds twenty rupees.</p>	²[Ten naye paise.]

Exemptions.

Receipt—

- (a) endorsed on or contained in any instrument duly stamped, ³[or any instrument exempted] under the proviso to section 3 (instruments executed on behalf of the ⁴[Government]) ⁵[or any cheque or bill of exchange payable on demand] acknowledging the receipt of the consideration-money therein expressed, or the receipt of any principal-money, interest or annuity, or other periodical payment thereby secured;
- (b) for any payment of money without consideration;
- (c) for any payment of rent by a cultivator on account of land assessed to Government revenue or ⁶[in the States of Madras, Bombay and Andhra] ⁷[as they existed immediately before the 1st November, 1956]] of Inam lands;

¹Substituted for the words "two annas" by sec. 13 of the Indian Stamp (Amendment) Act, 1958 (XIX of 1958).

²Substituted for the words "one anna" by sec. 13, *ibid.*

³These words were substituted for the words "or exempted" by the Repealing and Amending Act, 1928 (XVIII of 1928).

⁴See foot-note 5 on page 757, *ante*.

⁵These words were inserted by the Repealing and Amending Act, 1928 (XVIII of 1928).

⁶Substituted by the Andhra (Adaptation of Laws on Union Subjects) Order, 1954, for the words "in the Presidencies of Fort St. George and Bombay".

⁷Inserted by the Schedule to the Adaptation of Laws (No. 2) Order, 1956.

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I.—*contd.*

Description of Instrument.	Proper Stamp-duty.
53. Receipt— <i>concl'd.</i>	
<i>Exemptions—concl'd.</i>	
(d) for pay or allowances by non-commissioned ¹ [or petty] officers, ² [soldiers ¹ sailors or airmen] of ³ [⁴ the Indian military, ¹ naval or air forces], when serving in such capacity, or by mounted police constables;	
(e) given by holders of family-certificates in cases where the person from whose pay or allowances the sum comprised in the receipt has been assigned is a non-commissioned ¹ [or petty] officer, ⁵ [soldier, ¹ sailor or airman] of ⁶ [any of the said forces], and serving in such capacity;	
(f) for pensions or allowances by persons receiving such pensions or allowances in respect of their service as such non-commissioned ¹ [or petty] officers, ² [soldiers, ¹ sailors or airmen], and not serving the ⁷ [Government] in any other capacity;	
(g) given by a headman or lambardar for land-revenue or taxes collected by him;	
(h) given for money or securities for money deposited in the hands of any banker to be accounted for:	
Provided that the same is not expressed to be received of, or by the hands of, any other than the person to whom the same is to be accounted for:	
Provided also that this exemption shall not extend to a receipt or acknowledgment for any sum paid or deposited for, or upon a letter of allotment of a share, or in respect of a call upon any scrip or share of, or in, any incorporated company or other body corporate or such proposed or intended company or body or in respect of a debenture being a marketable security.	

⁸[See also POLICY OF INSURANCE (No. 47-B(2).)]

¹The words "or petty" "sailors," "sailor" and "naval" were inserted by sec. 2 and Schedule of the Amending Act, 1934 (XXXV of 1934).

²The words "soldiers or airmen" were substituted for the words "or soldiers" by sec. 2 and Schedule I of the Repealing and Amending Act, 1927 (X of 1927).

³The words "His Majesty's military or air forces" were substituted for the words "Her Majesty's Army or Her Majesty's Indian Army," by sec. 2 and Schedule I, *ibid.*

⁴The words "the Indian" were substituted for the words "His Majesty's" by para. 3 and the 1st Schedule of the Adaptation of Laws Order, 1950.

⁵The words "soldier or airman" were substituted for the words "or soldier", by sec. 2 and Schedule I, of the Repealing and Amending Act, 1927 (X of 1927).

⁶These words were substituted for the words "either of the said Armies", by sec. 2 and Schedule I, *ibid.*

⁷See foot-note 5 on page 757, *ante.*

⁸This note was added by sec. 7(4) of the Indian Stamp (Amendment) Act, 1906 (V of 1906).

of 1899.]

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I.—*contd.*

Description of Instrument.	Proper Stamp-duty.
54. Reconveyance of Mortgaged Property—	
(a) if the consideration for which the property was mortgaged does not exceed Rs. 1,000;	The same duty as a Conveyance (No. 23) for the amount of such consideration as set forth in the Reconveyance.
(b) in any other case	Ten rupees.
55. Release , that is to say, any instrument ¹ [(not being such a release as is provided for by section 23A)] whereby a person renounces a claim upon another person or against any specified property—	
(a) if the amount or value of the claim does not exceed Rs. 1,000;	The same duty as a Bond (No. 15) for such amount or value as set forth in the Release.
(b) in any other case	Five rupees.
56. Respondentia Bond , that is to say, any instrument securing a loan on the cargo laden or to be laden on board a ship and making repayment contingent on the arrival of the cargo at the port of destination.	The same duty as a Bond (No. 15) for the amount of the loan secured.
Revocation of any Trust or Settlement. See SETTLEMENT (No. 58); TRUST (No. 64).	
57. Security-Bond or Mortgage-Deed executed by way of security for the due execution of an office, or to account for money or other property received by virtue thereof or executed by a surety to secure the due performance of a contract,—	
(a) when the amount secured does not exceed Rs. 1,000;	The same duty as a Bond (No. 15) for the amount secured.
(b) in any other case	Five rupees.
<i>Exemptions.</i>	
Bond or other instrument, when executed—	
(a) by headmen nominated under rules framed in accordance with the Bengal Irrigation Act, 1876, section 99, for the due performance of their duties under that Act;	Ben. Act III of 1876.

¹These words, figure and letter were inserted by sec. 8(7) of the Indian Stamp (Amendment) Act, 1904 (XV of 1904).

(Schedule I.—Stamp-duty on Instrument's.)

SCHEDULE I.—*contd.*

Description of Instrument.	Proper Stamp-duty.
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57. Security-Bond or Mortgage-Deed—*concl'd.*
Exemptions—concl'd.

- (b) by any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem;
- (c) under No. 3A of the rules made by the ¹[State Government] under section 70 of the Bombay Irrigation Act, 1879;
- (d) executed by persons taking advances under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884, or by their sureties, as security for the repayment of such advances;
- (e) executed by officers of the ²[Government] or their sureties to secure the due execution of an office or the due accounting for money or other property received by virtue thereof.

58. Settlement—

A.—INSTRUMENT OF (including a deed of dower) ...

The same duty as a Bond (No. 15) for a sum equal to the amount or value of the property settled as set forth in such settlement; Provided that, where an agreement to settle is stamped with the stamp required for an instrument of settlement, and an instrument of settlement in pursuance of such agreement is subsequently executed, the duty on such instrument shall not exceed eight annas.

¹The words "Provincial Government" were substituted for the words "Governor of Bombay in Council" by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²The words "the Crown" were substituted for the word "Government" by para. 3 and the 1st Schedule of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

Bom. Act
VII of
1879.XIX of
1883.
XII of
1884.

of 1899.]

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I.—*contd.*

Description of Instrument.	Proper Stamp-duty.
58. Settlement— <i>concl'd.</i>	
<i>Exemptions.</i>	
(a) Deed of dower executed on the occasion of a marriage between Muhammadans. 1* * * *	
B.—REVOCATION OF—	The same duty as a Bond (No. 15) for a sum equal to the amount or value of the property concerned as set forth in the Instrument of Revocation but not exceeding ten rupees.

See also TRUST (No. 64).

59. Share Warrants to bearer issued under the ²Indian Companies Act, 1882. ³[One and a half times] the duty payable on a Conveyance (No. 23) for a consideration equal to the nominal amount of the shares specified in the warrant. VI of 1882.

Exemptions.

Share warrant when issued by a company in pursuance of the ²Indian Companies Act, 1882, section 30, to have effect only upon payment, as composition for that duty, to the Collector of Stamp-revenue, of—

- (a) ⁴[one and a half] *per centum* of the whole subscribed capital of the company, or
- (b) if any company which has paid the said duty or composition in full subsequently issues an addition to its subscribed capital—⁴[one and a half] *per centum* of the additional capital so issued.

¹Exemption (b) was omitted by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

²See now the Companies Act, 1956 (I of 1956).

³These words were substituted for the words "three-quarters of" by sec. 3(v) of the Indian Stamp (Amendment) Act, 1910 (VI of 1910).

⁴These words were substituted for the word "three-quarters", by sec. 3(v), *ibid.*

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I.—*contd.*

Description of Instrument.	Proper Stamp-duty.
Scrip. See Certificate (No. 19).	
60. Shipping Order for or relating to the conveyance of goods on board of any vessel.	One anna.
61. Surrender of Lease —	
(a) when the duty with which the lease is chargeable does not exceed five rupees;	The duty with which such lease is chargeable.
(b) in any other case	Five rupees.
<i>Exemption.</i>	
Surrender of lease, when such lease is exempted from duty.	
62. Transfer (whether with or without consideration)—	
¹ [(a) of shares in an incorporated company or other body corporate;	² [Seventy-five naye paise] for every hundred rupees or part thereof of the value of the share.]
(b) of debentures, being marketable securities, whether the debenture is liable to duty or not, except debentures provided for by section 8;	³ [One-half] of the duty payable on a Conveyance (No. 23) for a consideration equal to the face amount of the debenture.
(c) of any interest secured by a bond, mortgage-deed or policy of insurance—	The duty with which such bond, mortgage-deed or policy of insurance is chargeable.
(i) if the duty on such bond, mortgage-deed or policy does not exceed five rupees;	
(ii) in any other case	Five rupees.
(d) of any property under the ⁴ Administrator-General's Act, 1874, section 31;	Ten rupees.
(e) of any trust-property without consideration from one trustee to another trustee or from a trustee to a beneficiary.	Five rupees or such smaller amount as may be chargeable under clauses (a) to (c) of this Article.

Exemptions.

Transfers by endorsement—

- (a) of a bill of exchange, cheque or promissory note;

¹Substituted for the original clause by sec. 7 (iv) of the Indian Stamp (Amendment) Act, 1955 (XLIII of 1955).

²Substituted for the words "twelve annas" by sec. 13 of the Indian Stamp (Amendment) Act, 1958 (XIX) of 1958).

³Substituted for the word "one-quarter" by sec. 3 (vi) of the Indian Stamp (Amendment) Act, 1910 (VI of 1910).

⁴See now the Administrator-General's Act, 1913 (III of 1913).

of 1899.]

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I.—concl'd.

Description of Instrument.	Proper Stamp-duty.
<p>62. Transfer—concl'd. <i>Exemptions</i>—concl'd.</p>	
(b) of a bill of lading, delivery order, warrant for goods, or other mercantile document of title to goods;	
(c) of a policy of insurance;	
(d) of securities of the ¹ [Central Government].	
See also section 8.	
63. Transfer of Lease by way of assignment and not by way of under-lease.	The same duty as a C o n v e y - a n c e (No. 23) for a consideration equal to the amount of the consideration for t h e transfer.
<i>Exemption.</i>	
Transfer of any lease exempt from duty.	
64. Trust —	
A.—Declaration of,—of, or concerning, any property when made by any writing not being a Will.	The same duty as a Bond (No. 15) for a sum equal to the amount or value of the property c o n - cerned as set forth in the instrument but not exceeding fifteen rupees.
B.—Revocation of,—of, or concerning, any property when made by any instrument other than a Will.	The same duty as a Bond (No. 15) for a sum equal to the amount or value of the property concerned as set forth in the instrument but not exceeding ten rupees.
See also Settlement (No. 58).	
Valuation. See Appraisement (No. 8).	
Vakil. See Entry as a Vakil (No. 30).	
65. Warrant for Goods , that is to say, any instrument evidencing the title of any person therein named, or his assigns, or the holder thereof, to the property in any goods lying in or upon any dock, warehouse or wharf, such instrument being signed or certified by or on behalf of the person in whose custody such goods may be.	Four annas.

¹These words were substituted for the words "Government of India" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

The Indian Stamp Act, 1899.

[Act II

(Schedule IA.)

¹SCHEDULE IA.²

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1974 Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 ³or the Indian Stamp (Bengal Amendment) Act, 1935.]

(See section 3, first proviso.)

[Note.—The articles in Schedule IA are numbered so as to correspond with similar articles in Schedule I.]

Description of Instrument.

Proper
Stamp-duty.

- ⁴1. **Acknowledgement** of a debt, exceeding twenty rupees in amount or value, written or signed by, or on behalf of, a debtor in order to supply evidence of such debt in any book (other than a banker's pass book) or on a separate piece of paper when such book or paper is left in the creditor's possession: provided that such acknowledgement does not contain any promise to pay a debt or any stipulation to pay interest or to deliver any goods or other property, but not including an acknowledgement relating to bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, shares, debentures, proxies or receipts. Ten naye paise.

2. **Administration-Bond** including a bond given ⁵[under section 6 of the Government Savings Banks Act, 1873, or section 291 or section 375 or section 376 of the Indian Succession Act, 1925]—

(a) where the amount does not exceed Rs. 1,000. The same duty as a Bond (No. 15) for such amount.

(b) in any other case ... [Rupees fifteen.]

¹Notwithstanding anything contained in the Indian Stamp Act, 1899 (II of 1899), there shall be levied and collected, on all instruments mentioned in Articles 18, 23, 31, 32, 33 35, 40, 54, 58 and 63, in Schedule IA to the said Act, a surcharge which shall be one-fifth of the Stamp-duty chargeable in respect of any such instruments. *Vide* sec. 4 of the Indian Stamp (West Bengal Amendment) Act, 1964 (West Ben. Act XVII of 1964).

(2) In computing the Stamp-duty under any of the Articles in Schedule IA to the Indian Stamp Act, 1899 or the surcharge under section 4 of the Indian Stamp (West Bengal Amendment) Act, 1964, such Stamp-duty or surcharge, as the case may be, shall, if it is not a multiple of five naye paise, be rounded off to the next higher multiple of five naye paise. *Vide* sec. 5 of the Indian Stamp (West Bengal Amendment) Act, 1964, (West Ben. Act XVII of 1964).

²Schedule IA was inserted by sec. 13 of the Bengal Stamp (Amendment) Act, 1922 (Ben. Act III of 1922).

³These words and figures were inserted by sec. 5 of the Indian Stamp (Bengal Amendment) Act, 1935 (Ben. Act XII of 1935).

⁴Article 1 was inserted by sec. 3 (1) of the Indian Stamp (West Bengal Second Amendment) Act, 1962 (West Ben. Act XXX of 1962).

⁵These words and figures were substituted for the words and figures "under section 256 of the Indian Succession Act, 1865, section 6 of the Government Savings Bank Act, 1873, section 78 of the Succession Certificate Act, 1889" by sec. 7(1) of the Indian Stamp (Bengal Amendment) Act, 1935 (Ben. Act XII of 1935).

⁶Substituted for the words "Ten rupees" by sec. 3(2) of the Indian Stamp (West Bengal Second Amendment) Act, 1962 (West Ben. Act XXX of 1962).

V of 1873.
XXXIX of
1925.

of 1899.]

(Schedule IA.)

SCHEDULE IA.—*contd.*

Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.

Description of Instrument.	Proper Stamp-duty.
3. Adoption-Deed , that is to say, any instrument (other than a will), recording an adoption, or conferring or purporting to confer an authority to adopt.	¹ [Rupees thirty.]
Advocate. See Entry as an Advocate (No. 30).	
4. Affidavit , including an affirmation or declaration in the case of persons by law allowed to affirm or declare instead of swearing.	² [Rupees three.]
<i>Exemptions.</i>	
Affidavit or declaration in writing when made—	
(a) as a condition of enlistment under the ³ [Army Act, 1950.]	⁴ [46 of 1950.]
(b) for the immediate purpose of being filed or used in any Court or before the officer of any Court; or	

¹Substituted for the words "Twenty rupees" by sec. 3 (3) of the Indian Stamp (West Bengal Second Amendment) Act, 1962 (West Ben. Act XXX of 1962).

²Substituted for the words "Two rupees" by sec. 3 (4) (i), *ibid.*

³Substituted for the words and figures "Indian Army Act, 1911" by sec. 3 (4) (ii), *ibid.*

⁴Substituted for the figures and word, in the marginal note, "VIII of 1911" by sec. 3(4) (iii), *ibid.*

(Schedule IA.)

SCHEDULE IA.—*contd.**Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.*

Description of Instrument.	Proper Stamp-duty.
4. Affidavit— <i>concl'd.</i>	
<i>Exemptions—concl'd.</i>	
(c) for the sole purpose of enabling any person to receive any pension or charitable allowance.	
5. Agreement or Memorandum of an Agreement—	
(a) if relating to the sale of a bill of exchange;	¹ [Forty naye paise]
(b)—	
(i) if relating to the sale of a Government security;	Subject to a maximum of ³ [rupees thirty, twenty naye paise.] for every Rs. 10,000 or part thereof, of the value of the security.
(ii) if relating to the sale of a share in an incorporated company or other body corporate;	⁴ [Twenty naye paise for every Rs. 5,000.00.] or part thereof, of the value of the share.
(c) if relating to matters not otherwise provided for except matters relating to cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies or receipts.	⁶ [Rupee one and fifty naye paise.]
<i>Exemptions.</i>	
Agreement or memorandum of agreement—	
(a) for or relating to the sale of goods or merchandise exclusively, not being a Note or Memorandum chargeable under No 43;	
(b) made in the form of tenders to the ⁷ [Central Government] for, or relating to any loan;	
* * * * *	
Agreement to lease. See Lease (No. 35).	

¹These words were substituted for the words "Twenty-five naye paise" by sec. 3 (1) (i) of the Indian Stamp (West Bengal Amendment) Act, 1964 (West Ben. Act XVII of 1964).

²Clause (b) was substituted for the original clause (b) by sec. 7 (2) (b) of the Indian Stamp (Bengal Amendment) Act, 1935 (Ben. Act XII of 1935).

³Substituted for the words "rupees twenty, twelve naye paise" by sec. 3 (1) (ii) of the Indian Stamp (West Bengal Amendment) Act, 1964 (West Ben. Act XVII of 1964).

⁴Substituted for the words and figures "twelve naye paise for every Rs. 5,000.00" by sec. 3(5) (ii) (c), *ibid.*

⁵Substituted for the original clause (c) by sec. 3(5) (i) (a) of the Indian Stamp (West Bengal Amendment) Act, 1962 (West Ben. Act XXX of 1962).

⁶Substituted for the words "One rupee" by sec. 3(5) (ii) (d), *ibid.*

⁷These words were substituted for the words "Government of India" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁸Clause (c) of the *Exemptions* was omitted by sec. 3(5) (i) (b) of the Indian Stamp (West Bengal Amendment) Act, 1962 (West Ben. Act XXX of 1962).

of 1899.]

(Schedule IA.)

SCHEDULE IA.—*contd.*

Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.

Description of Instrument.		Proper Stamp-duty.		
6. Agreement relating to deposit of Title-deeds, Pawn or Pledge, that is to say, any instrument evidencing an agreement relating to—				
(1) the deposit of title-deeds or instruments constituting or being evidence of the title to any property whatever (other than a marketable security), or				
(2) the pawn or pledge of moveable property, where such deposit pawn or pledge has been made by way of security for the repayment of money advanced or to be advanced by way of loan or an existing or future debt				
(a) if such loan or debt is repayable on demand or more than three months from the date of the instrument evidencing the agreement—				
		If drawn singly.	If drawn in set of two, for each part of the set.	If drawn in set of three, for each part of the set.
		Rs. nP.	Rs. nP.	Rs. nP.
(i) when the amount of the loan or debt does not exceed Rs. 200		.60	.40	.20
(ii) when it exceeds Rs. 200 but does not exceed Rs. 400		1.15	.60	.40
Ditto 400 ditto 600		1.70	.95	.60
Ditto 600 ditto 800		2.25	1.15	.75
Ditto 800 ditto 1,000		2.85	1.50	.95
Ditto 1,000 ditto 1,200		3.40	1.70	1.15
Ditto 1,200 ditto 1,600		4.50	2.25	1.50
Ditto 1,600 ditto 2,500		6.75	3.40	2.25
Ditto 2,500 ditto 5,000		13.50	6.75	4.50
Ditto 5,000 ditto 7,500		20.25	10.15	6.75
Ditto 7,500 ditto 10,000		27.00	13.50	9.00
Ditto 10,000 ditto 15,000		40.50	20.25	13.50
Ditto 15,000 ditto 20,000		54.00	27.00	18.00
Ditto 20,000 ditto 25,000		67.50	33.75	22.50
Ditto 25,000 ditto 30,000		81.00	40.50	27.00
and for every additional Rs. 10,000 or part thereof in excess of Rs. 30,000.		27.00	13.50	9.00]
(b) if such loan or debt is repayable not more than three months from the date of such instrument.		Half the duty payable on a loan or debt under clause (a) (i) or clause (a) (ii) for the amount secured:		

²Provided that such duty shall, if not an exact multiple of five naye paise, be rounded up to the next higher multiple of five naye paise.

¹Substituted for the existing entries in clauses (a) (i) and (a) (ii) under the heading "Proper Stamp-duty" by sec. 3 (6) (i) of the Indian Stamp (West Bengal Second Amendment) Act, 1962 (West Ben. Act XXX of 1962),

²This proviso was added by sec. 3 (6) (ii), *ibid.*

(Schedule IA.)

SCHEDULE IA.—*contd.**Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.*

Description of Instruments.	Proper Stamp-duty.
7. Appointment in execution of a power whether of trustees or of property, moveable or immoveable, where made by any writing not being a will.	¹ [Rupees thirty-seven and fifty naye paise.]
8. Appraisement or Valuation made otherwise than under an order of Court in the course of a suit—	
(a) where the amount does not exceed Rs. 1,000	The same duty as a Bottomry Bond (No. 16) for such amount.
(b) in any other case	² [Rupees fifteen.]

Exemptions.

- (a) Appraisement or valuation made for the information of one party only, and not being in any manner obligatory between parties either by agreement or operation of law.
- (b) Appraisement of crops or the purpose of ascertaining the amount to be given to a landlord as rent.
9. Apprenticeship-deed, including every writing relating to the service or tuition of any apprentice, clerk or servant placed with any master to learn any profession, trade or employment, not being Articles of Clerkship (No. 11). ³[Rupees fifteen.]

Exemptions.

- ** * * *
- ⁵10. Articles of Association of a Company—
- (a) where the nominal share capital does not exceed one lakh of rupees. ⁶[Rupees seventy-five.]
- (b) where the nominal share capital exceeds one lakh of rupees. ⁷[Rupees one hundred and fifty.]

¹Substituted for the words "Twenty-five rupees" by sec. 3(7) of the Indian Stamp (West Bengal Second Amendment) Act, 1962 (West Ben. Act XXX of 1962).

²Substituted for the words "Ten rupees" by sec. 3(8), *ibid.*

³Substituted for the words "Ten rupees" by sec. 3(9)(i), *ibid.*

⁴The entry under the heading "Exemptions" was omitted by sec. 3(9) (ii), *ibid.*

⁵Article 10 was substituted for the original article 10 by sec. 7(5) of the Indian Stamp (Bengal Amendment) Act, 1935 (Ben. Act XII of 1935).

⁶Substituted for the words "Fifty rupees" by sec. 3(10) (i) of the Indian Stamp (West Bengal Amendment) Act, 1962 (West Ben. Act XXX of 1962).

⁷Substituted for the words "One hundred rupees" by sec. 3 (10)(ii), *ibid.*

of 1899.]

(Schedule 1A.)

SCHEDULE 1A.—*contd.*

Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.

Description of Instruments.	Proper Stamp-duty.
10. Articles of Association of a Company— <i>concl'd.</i>	
<i>Exemptions.</i>	
Articles of any association not formed for profit and registered under section 26 of the Indian Companies Act, 1913.	VII of 1913.
See also Memorandum of Association of a Company (No. 39).	
11. Articles of Clerkship or contract whereby any person first becomes bound to serve as a clerk in connection with his admission as an Attorney in any High Court.	Rupees two hundred and fifty.
<i>Assignment.</i> ¹ See Conveyance (No. 23), Transfer (No. 62), and Transfer of Lease (No. 63), as the case may be.	
<i>Attorney.</i> See Entry as an Attorney (No. 30), and Power-of-attorney (No. 48).	
<i>Authority to Adopt.</i> See Adoption-Deed (No. 3).	
12. Award, that is to say, any decision in writing by an arbitrator or umpire, not being an award directing a partition, on a reference made otherwise than by an order of the Court in the course of a suit—	
(a) where the amount or value of the property to which the award relates as set forth in such award, does not exceed Rs. 1,000;	The same duty as a Bond (No. 15) for such amount.
(b) if it exceeds Rs. 1,000 but does not exceed Rs. 5,000;	² [Rupees fifteen.]
and for every additional Rs. 1,000 or part thereof in excess of Rs. 5,000.	³ [Rupee one subject to a maximum of rupees one hundred.]
<i>Exemption.</i>	
* * * * *	
* * * * *	* * *

¹Article 11 was inserted by sec. 3 (11) of the Indian Stamp (West Bengal Second Amendment) Act, 1962 (West Ben. Act XXX of 1962).

²Substituted for the words "Ten rupees" by sec. 3 (12) (i), *ibid.*

³Substituted for the words "Eight annas subject to a maximum of fifty rupees" by sec. 3(12) (ii), *ibid.*

⁴The entry under the heading "Exemption" was omitted by sec. 3 (12) (iii), *ibid.*

(Schedule IA.)

SCHEDULE IA.—*contd.*

Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.

Description of Instrument.	Proper Stamp-duty.
14. Bill of lading (including a through bill of lading)	Six annas.
	<i>N.B.</i> —If a bill of lading is drawn, in parts, the proper stamp therefor must be borne by each one of the set.

Exemptions.

XV of 1908. (a) Bill of lading when the goods therein described are received at a place within the limits of any port, as defined under the Indian Ports Act, 1908, and are to be delivered at another place within the limits of the same port.

(b) Bill of lading when executed out of ¹[India] and relating to property to be delivered in ¹[India].

✓ 15. **Bond** [as defined by section 2(5)], not being a debenture (No. 27), and not being otherwise (Provided for by this Act, or by the Court-fees Act, 1870—

where the amount or value does not exceed Rs. 10; ²[Twenty naye paise.]

where it exceeds Rs. 10 and does not exceed Rs. 50; ³[Fifty naye paise.]

where it exceeds Rs. 50 and does not exceed Rs. 100; ⁴[Rupee one.]

where it exceeds Rs. 100 and does not exceed Rs. 200; ⁵[Two rupees.]

where it exceeds Rs. 200 and does not exceed Rs. 300; ⁶[Rupees three and sixty naye paise.]

where it exceeds Rs. 300 and does not exceed Rs. 400; ⁷[Rupees four and eighty naye paise.]

where it exceeds Rs. 400 and does not exceed Rs. 500; ⁸[Rupees six.]

¹See foot-note 1 on page 753, *ante*.

²Substituted for the words "Two annas" by sec. 3(13) (i) of the Indian Stamp (West Bengal Second Amendment) Act, 1962 (West Ben. Act XXX of 1962).

³Substituted for the words "Four annas" by sec. 3 (13) (ii), *ibid*.

⁴Substituted for the words "Eight annas" by sec. 3 (13) (iii), *ibid*.

⁵Substituted for the words "One rupee" by sec. 3 (13) (iv), *ibid*.

⁶Substituted for the words "One rupee fourteen annas" by sec. 3(13) (v), *ibid*.

⁷Substituted for the words "Three rupees" by sec. 3(13) (vi), *ibid*.

⁸Substituted for the words "Three rupees twelve annas" by sec. 3 (13) (vii), *ibid*.

of 1899.]

(Schedule IA.)

SCHEDULE IA.—*contd.*

Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.

Description of Instrument.	Proper Stamp-duty.
15. Bond.— <i>contd.</i>	
where it exceeds Rs. 500 and does not exceed Rs. 600;	¹ [Rupees seven and twenty naye paise.]
where it exceeds Rs. 600 and does not exceed Rs. 700;	² [Rupees eight and forty naye paise.]
where it exceeds Rs. 700 and does not exceed Rs. 800;	³ [Rupees nine and sixty naye paise.]
where it exceeds Rs. 800 and does not exceed Rs. 900;	⁴ [Rupees ten and eighty naye paise.]
where it exceeds Rs. 900 and does not exceed Rs. 1,000;	⁵ [Rupees twelve.]
and for every Rs. 500 or part thereof in excess of Rs. 1,000.	⁶ [Rupees six.]

See Administration-Bond (No. 2), Bottomry Bond (No. 16), Customs Bond (No. 26), Indemnity Bond (No. 34), Respondentia Bond (No. 56), Security Bond (No. 57).

Exemptions.

Bond, when executed by—

- (a) headmen nominated under rules framed in accordance with the Bengal Irrigation Act, 1876, section 99, for the due performance of their duties under that Act;

Ben. Act
III of
1876.

¹Substituted for the words "Four rupees eight annas" by sec. 3 (13) (viii) of the Indian Stamp (West Bengal Second Amendment) Act, 1962 (West Ben. Act XXX of 1962).

²Substituted for the words "Five rupees four annas" by sec. 3(13) (ix), *ibid.*

³Substituted for the words "Six rupees" by sec. 3(13) (x), *ibid.*

⁴Substituted for the words "Six rupees twelve annas" by sec. 3 (13) (xi), *ibid.*

⁵Substituted for the words "Seven rupees eight annas" by sec. 3 (13) (xii), *ibid.*

⁶Substituted for the words "Three rupees twelve annas" by sec. 3 (13) (xiii), *ibid.*

(Schedule IA.)

SCHEDULE IA.—*contd.*

Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.

Description of Instruments.	Proper Stamp-duty.
15. Bond. — <i>concl.</i>	
(b) any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility, shall not be less than a specified sum per mensem.	
<div data-bbox="114 728 252 910" style="transform: rotate(-45deg); position: absolute; left: -100px; top: 0px;"> Ref. 1972 16 </div> Bottomry Bond , that is to say, any instrument whereby the master of a sea-going ship borrows money on the security of the ship to enable him to preserve the ship or prosecute her voyage—	
where the amount or value secured does not exceed Rs. 10;	¹ [Thirty naye paise.]
where it exceeds Rs. 10 and does not exceed Rs. 50;	² [Sixty naye paise.]
where it exceeds Rs. 50 and does not exceed Rs. 100;	³ [Rupee one and twenty naye paise.]
where it exceeds Rs. 100 and does not exceed Rs. 200;	⁴ [Rupees two and forty naye paise.]

¹Substituted for the words "Three annas" by sec. 3 (14) (i) of the Indian Stamp (West Bengal Second Amendment) Act, 1962 (West Ben. Act XXX of 1962).

²Substituted for the words "Six annas" by sec. 3 (14) (ii), *ibid.*

³Substituted for the words "Twelve annas" by sec. 3 (14) (iii), *ibid.*

⁴Substituted for the words "One rupee eight annas" by sec. 3 (14) (iv), *ibid.*

of 1899.]

(Schedule 1A.)

SCHEDULE 1A.— *contd.*

Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.

Description of Instruments.	Proper Stamp-duty.
16. Bottomry Bond— <i>concl'd.</i>	
where it exceeds Rs. 200 and does not exceed Rs. 300;	[Rupees three and forty naye paise.]
where it exceeds Rs. 300 and does not exceed Rs. 400;	[Rupees four and fifty naye paise.]
where it exceeds Rs. 400 and does not exceed Rs. 500;	[Rupees five and sixty naye paise.]
where it exceeds Rs. 500 and does not exceed Rs. 600;	[Rupees six and seventy-five naye paise.]
where it exceeds Rs. 600 and does not exceed Rs. 700;	[Rupees seven and ninety naye paise.]
where it exceeds Rs. 700 and does not exceed Rs. 800;	[Rupees nine.]
where it exceeds Rs. 800 and does not exceed Rs. 900;	[Rupees ten and ten naye paise.]
where it exceeds Rs. 900 and does not exceed Rs. 1,000;	[Rupees eleven and twenty-five naye paise.]
and for every Rs. 500 or part thereof in excess of Rs. 1,000.	[Rupees five and sixty naye paise.]

¹Substituted for the words "Two rupees four annas" by sec. 3(14) (v) of the Indian Stamp (West Bengal Second Amendment) Act, 1962 (West Ben. Act XXX of 1962).

²Substituted for the words "Three rupees" by sec. 3 (14) (vi), *ibid.*

³Substituted for the words "Three rupees twelve annas" by sec. 3 (14) (vii), *ibid.*

⁴Substituted for the words "Four rupees eight annas" by sec. 3(14) (viii), *ibid.*

⁵Substituted for the words "Five rupees four annas" by sec. 3 (14) (ix), *ibid.*

⁶Substituted for the words "Six rupees" by sec. 3 (14) (x), *ibid.*

⁷Substituted for the words "Six rupees twelve annas" by sec. 3 (14) (xi), *ibid.*

⁸Substituted for the words "Seven rupees eight annas" by sec. 3 (14) (xii), *ibid.*

⁹Substituted for the words "Three rupees twelve annas" by sec. 3 (14) (xiii), *ibid.*

(Schedule IA.)

SCHEDULE IA.—*contd.*

Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.

Description of Instruments.	Proper Stamp-duty.
17. Cancellation —Instrument of (including any instrument by which any instrument previously executed is cancelled), if attested and not otherwise provided for.	¹ [Rupees ten.]
See also RELEASE (No. 55), Revocation of Settlement (No. 58-B), Surrender of Lease (No. 61), Revocation of Trust (No. 64-B).	
18. Certificate of Sale (in respect of each property put up as a separate lot and sold), granted to the purchaser of any property sold by public auction by a Civil or Revenue Court, or Collector or other Revenue-officer	
(a) where the purchase-money does not exceed Rs. 10;	² [Forty naye paise.]
(b) where the purchase-money exceeds Rs. 10 but does not exceed Rs. 25;	³ [Seventy-five naye paise.]
(c) in any other case	The same duty as a conveyance (No. 23) for a consideration equal to the amount of the purchase-money only.

¹Substituted for the words "Seven rupees eight annas" by sec. 3 (15) of the Indian Stamp (West Bengal Second Amendment) Act, 1962 (West Ben. Act XXX of 1962).

²See foot-note 1 on page 824, *ante*.

³Substituted for the words "Four annas" by sec. 3(16) (i), *ibid*.

⁴Substituted for the words "Eight annas" by sec. 3 (16) (ii), *ibid*.

of 1899.]

(Schedule 1A.)

SCHEDULE 1A.—*contd.*

Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.

Description of Instruments.	Proper Stamp-duty.
19. Certificate for other Document evidencing the right or title, otherwise than by transfer, of the holder thereof or any other person, either to any share, scrip or stock in or of any incorporated company or other body corporate, or to become proprietor of share, scrip or stock in or of any such company or body.	Twenty naye paise.
<i>See also</i> letter of allotment of shares (No. 36).	
20. Charter-Party , that is to say, any instrument (except an agreement for the hire of a tug-steamer), whereby a vessel or some specified principal part thereof is left for the specified purposes of the charterer, whether it includes a penalty clause or not.	[Rupees three.]
22. Composition-Deed , that is to say, any instrument executed by a debtor, whereby he conveys his property for the benefit of his creditors or whereby payment of a composition or dividend on their debts is secured to the creditors, or whereby provision is made for the continuance of the debtor's business, under the supervision of inspectors or under letters of license, for the benefit of his creditors.	[Rupees thirty.]

Conveyance [as defined by section 2(10)], not being a Transfer charged or exempted under No. 62—

✓✓

✓

where the amount or value of the consideration for such conveyance as set forth therein does not exceed Rs. 50;

[Rupee one and twenty naye paise.]

¹Article 19 was inserted by sec. 3 (17) of the Indian Stamp (West Bengal Second Amendment) Act, 1962 (West Ben. Act XXX of 1962).

²Substituted for the words "Two rupees" by sec. 3(18), *ibid.*

³Substituted for the words "Twenty rupees" by sec. 3(19), *ibid.*

⁴See foot-note 1 on page 824, *ante*.

⁵Substituted for the words "Twelve annas" by sec. 3 (20) (i) of the Indian Stamp (West Bengal Second Amendment) Act, 1962 (West Ben. Act XXX of 1962).

(Schedule IA.)

SCHEDULE IA.—*contd.**Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.*

Description of Instrument.	Proper Stamp-duty.
where it exceeds Rs. 50 but does not exceed Rs. 100;	¹ [Rupees two and twenty-five naye paise.]
where it exceeds Rs. 100 but does not exceed Rs. 200;	² [Rupees four and fifty naye paise.]
where it exceeds Rs. 200 but does not exceed Rs. 300;	³ [Rupees six and seventy-five naye paise.]
where it exceeds Rs. 300 but does not exceed Rs. 400;	⁴ [Rupees nine.]
where it exceeds Rs. 400 but does not exceed Rs. 500;	⁵ [Rupees eleven and twenty-five naye paise.]
where it exceeds Rs. 500 but does not exceed Rs. 600;	⁶ [Rupees thirteen and fifty naye paise.]
where it exceeds Rs. 600 but does not exceed Rs. 700;	⁷ [Rupees fifteen and seventy-five naye paise.]
where it exceeds Rs. 700 but does not exceed Rs. 800;	⁸ [Rupees eighteen.]
where it exceeds Rs. 800 but does not exceed Rs. 900;	⁹ [Rupees twenty and twenty-five naye paise.]
where it exceeds Rs. 900 but does not exceed Rs. 1,000;	¹⁰ [Rupees twenty-two and fifty naye paise.]
and for every Rs. 500 or part thereof in excess of Rs. 1,000.	¹¹ [Rupees eleven and twenty-five naye paise.]

¹Substituted for the words "One rupee eight annas" by sec. 3(20) (ii) of the Indian Stamp (West Bengal Second Amendment) Act, 1962 (West Ben. Act XXX of 1962).

²Substituted for the words "Three rupees" by sec. 3(20) (iii), *ibid.*

³Substituted for the words "Four rupees eight annas" by sec. 3(20) (iv), *ibid.*

⁴Substituted for the words "Six rupees" by sec. 3(20) (v), *ibid.*

⁵Substituted for the words "Seven rupees eight annas" by sec. 3(20) (vi), *ibid.*

⁶Substituted for the words "Nine rupees" by sec. 3(20) (vii), *ibid.*

⁷Substituted for the words "Ten rupees eight annas" by sec. 3(20) (viii), *ibid.*

⁸Substituted for the words "Twelve rupees" by sec. 3(20) (ix), *ibid.*

⁹Substituted for the words "Thirteen rupees eight annas" by sec. 3(20) (x), *ibid.*

¹⁰Substituted for the words "Fifteen rupees" by sec. 3(20) (xi), *ibid.*

¹¹Substituted for the words "Seven rupees eight annas" by sec. 3(20) (xii), *ibid.*

of 1899.]

(Schedule IA.)

SCHEDULE IA.—*contd.*

Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.

Description of Instruments.

Proper Stamp-duty.

23. **Conveyance**—*concl'd.*

Exemption.

[14 of 957.] Assignment of copyright under the ¹[Copyright Act, 1957, section 18.]

Co-partnership-Deed. See Partnership (No. 46).

24. **Copy or Extract** certified to be a true copy or extract by or by order of any public officer and not chargeable under the law for the time being in force relating to court-fees—

- (i) if the original was not chargeable with duty, or if the duty with which it was chargeable does not exceed one rupee; ²[Rupee one and fifty naye paise.]
- (ii) in any other case not falling within the provisions of section 6A. ³[Rupees three.]

Exemptions.

- (a) Copy of any paper which a public officer is expressly required by law to make or furnish for record in any public office or for any public purpose.
- (b) Copy of, or extract from, any register relating to births, baptisms, namings, dedications, marriages, divorces, deaths or burials.

25. **Counterpart or Duplicate** of any instrument, chargeable with duty and in respect of which the proper duty has been paid—

- (a) if the duty with which the original instrument is chargeable does not exceed ⁴[Rupees three.] The same duty as is payable on the original.

¹Substituted for the words and figures "Indian Copyright Act, 1914, section 5" by sec. 3 (20) (xiii) of the Indian Stamp (West Bengal Second Amendment) Act, 1962 (West Ben. Act XXX of 1962).

²Substituted for the figures and word "III of 1914", in the marginal note, by sec. 3(20) (xiv), *ibid.*

³Substituted for the words "One rupee" by sec. 3(21) (i), *ibid.*

⁴Substituted for the words "Two rupees" by sec. 3(21) (ii), *ibid.*

⁵Substituted for the words "Two rupees" by sec. 3(22), *ibid.*

(Schedule IA.)

SCHEDULE IA.—*contd.*

Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.

Description of Instruments.	Proper Stamp-duty.
25. Counterpart or Duplicate — <i>concl'd.</i>	
(b) in any other case not falling within the provisions of section 6A.	¹[Rupees three.]
<i>Exemption.</i>	
Counterpart of any lease granted to a cultivator, when such lease is exempted from duty.	
26. Customs Bond —	
(a) where the amount does not exceed Rs. 1,000	The same duty as a Bottomry Bond (No. 16) for such amount.
(b) in any other case	²[Rupees fifteen.]
27. Debenture (whether a mortgage debenture or not), being a marketable security transferable—	
(a) by endorsement or by a separate instrument of transfer;	The same duty as a Bottomry Bond (No. 16) for the same amount.
(b) by delivery ...	The same duty as a Conveyance (No. 23) for a consideration equal to the face amount of the debenture.

Explanation.—The term “Debenture” includes any interest coupons attached thereto, but the amount of such coupons shall not be included in estimating the duty.

Exemption.

A debenture issued by an incorporated company or other body corporate in terms of a registered mortgage-deed, duly stamped in respect of the full amount of debentures to be issued thereunder, whereby the company or body borrowing makes over, in whole or in part, their property to trustees for the benefit of the debenture-holders: provided that the debentures so issued are expressed to be issued in terms of the said mortgaged-deed.

¹Substituted for the words “Two rupees” by sec. 3 (22) of the Indian Stamp (West Bengal Second Amendment) Act, 1962 (West Ben. Act XXX of 1962).

²Substituted for the words “Ten rupees” by sec. 3 (23), *ibid.*

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(Schedule 1A.)

SCHEDULE 1A.—*contd.*

Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.

Description of Instrument.

Proper
Stamp-duty.

27. **Debenture** — *concl'd.*

Exemption — *concl'd.*

See also BOND (No. 15) and sections 8 and 55.

Declaration of any trust : *See* Trust (No. 64).

* * * * *

¹28. **Delivery order in respect of goods** that is to say any instrument entitling any person therein named or his assigns or the holder thereof, to the delivery of any goods lying in any dock or port or in any warehouse in which goods are stored or deposited on rent or hire, or upon any wharf, such instrument being signed by or on behalf of the owner of such goods upon the sale or transfer of the property therein, when such goods exceed in value twenty rupees. Ten naye paise.

Deposit of Title-deeds : *See* Agreement relating to deposit of title-deeds, pawn or pledge (No. 6).

Dissolution of Partnership : *See* Partnership (No. 46).

29. **Divorce** — Instrument of, that is to say, any instrument by which any person effects the dissolution of his marriage. ²[Rupees ten.]

Dower — Instrument of. *See* Settlement (No. 58).

Duplicate. — *See* Counterpart (No. 25).

³30. Entry as an Attorney on the roll of the High Court at Calcutta under any law for the time being in force. ⁴[Rupees two hundred and fifty.]

Exemption.

Entry of an attorney on the roll of the High Court at Calcutta, when he has previously been enrolled as such in any other High Court.

¹Article 28 was inserted by sec. 3 (24) of the Indian Stamp (West Bengal Second Amendment) Act, 1962 (West Ben. Act XXX of 1962).

²Substituted for the words "Five rupees" by sec. 3 (25), *ibid.*

³Substituted for the original article by sec. 3 of the Indian Stamp (West Bengal Amendment) Act, 1962 (West Ben. Act X of 1962).

⁴Substituted for the words "Five hundred rupees" by sec. 3(26) of the Indian Stamp (West Bengal Second Amendment) Act, 1962 (West Ben. Act XXX of 1962).

(Schedule IA.)

SCHEDULE IA.—*contd.*

Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.

Description of Instruments.	Proper Stamp-duty.
131. Exchange of property Instrument of ...	The same duty as a Conveyance (No. 23) for a consideration equal to the value of the property of greatest value as set forth in such instrument.
Extract. See Copy (No. 24).	
132. Further Charge Instrument of, that is to say, any instrument imposing a further charge on mortgaged property—	The same duty as a Conveyance (No. 23) for a consideration equal to the amount of the further charge secured by such instrument.
(a) when the original mortgage is one of the description referred to in clause (a) of Article No. 40 (that is, with possession);	
(b) when such mortgage is one of the description referred to in clause (b) of Article No. 40 (that is, without possession)—	
(i) if at the time of execution of the instrument of further charge possession of the property is given or agreed to be given under such instrument;	The same duty as a Conveyance (No. 23) for a consideration equal to the charge (including the original mortgage and any further charge already made), less the duty already paid on such original mortgage and further charge.
(ii) if possession is not so given ...	The same duty as a Bond (No. 15) for the amount of the further charge secured by such instrument.
133. Gift —Instrument of, not being a Settlement (No. 58), or Will or Transfer (No. 62).	The same duty as a Conveyance (No. 23) for a consideration equal to the value of the property as set forth in such instrument.
Hiring agreement or agreement for service, See Agreement (No. 5).	

¹See foot-note 1 on page 824, *ante*.

(Schedule IA.)

SCHEDULE IA.—*contd.*

Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.

Description of Instruments.	Proper Stamp-duty.
34. Indemnity Bond	The same duty as a Security-bond (No. 57) for the same amount.
Inspectorship-Deed. See Composition-Deed (No. 22).	
35. Lease, including a under-lease or sub-lease and any agreement to let or sub-let— (a) where by such lease the rent is fixed and no premium is paid or delivered—	
(i) where the lease purports to be for a term of less than one year;	The same duty as a Bottomry Bond (No. 16) for the whole amount payable or deliverable under such lease.
(ii) where the lease purports to be for a term of not less than one year but not more than five years;	The same duty as a Bottomry Bond (No. 16) for the amount or value of the average annual rent reserved.
(iii) where the lease purports to be for a term exceeding five years and not exceeding ten years;	The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of the average annual rent reserved.
(iv) where the lease purports to be for a term exceeding ten years but not exceeding twenty years;	The same duty as a Conveyance (No. 23) for a consideration equal to twice the amount or value of the average annual rent reserved.
(v) where the lease purports to be for a term exceeding twenty years but not exceeding thirty years;	The same duty as a Conveyance (No. 23) for a consideration equal to three times the amount or value of the average annual rent reserved.

¹See foot-note 1 on page 824, ante.

(Schedule IA.)

SCHEDULE IA.—*contd.*

Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.

Description of Instrument.	Proper Stamp-duty.
35. <i>Lease—contd.</i>	
(vi) where the lease purports to be for a term exceeding thirty years but not exceeding one hundred years;	The same duty as a C o n v e y - a n c e (No. 23) for a consideration equal to four times the amount or value of the average annual rent reserved.
(vii) where the lease purports to be for a term exceeding one hundred years or in perpetuity;	The same duty as a C o n v e y - a n c e (No. 23) for a consideration equal in the case of a lease granted solely for agricultural purposes to one-tenth and in any other case to one-sixth of the whole amount of rents which would be paid or delivered in respect of the first fifty years of the lease.
(viii) where the lease does not purport to be for any definite term;	The same duty as a C o n v e y - a n c e (No. 23) for a consideration equal to three times the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long.
(b) where the lease is granted for a fine or premium, or for money advanced and where no rent is reserved.	The same duty as a C o n v e y - a n c e (No. 23) for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease.

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(Schedule IA.)

SCHEDULE IA.—contd.

Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.

Description of Instrument.	Proper Stamp-duty.
<p>35. <i>Lease—contd.</i></p> <p>(c) where the lease is granted for a fine or premium or for money advanced in addition to rent reserved.</p> <p style="text-align: center;"><i>Exemptions.</i></p> <p>(a) Lease, executed in the case of a cultivator and for the purposes of cultivation (including a lease of trees for the production of food or drink), without the payment or delivery of any fine or premium, when a definite term is expressed and such term does not exceed one year, or when the average annual rent reserved does not exceed one hundred rupees.</p> <p>In this exemption a lease for the purposes of cultivation shall include a lease of lands for cultivation together with a homestead or tank.</p> <p style="text-align: center;">* * * * *</p>	<p>The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease, in addition to the duty which would have been payable on such lease, if no fine or premium or advance had been paid or delivered:</p> <p>Provided that, in any case when an agreement to lease is stamped with the <i>ad valorem</i> stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed ¹[Rupee one and fifty naye paise.]</p>

¹Substituted for the words "twelve annas" by sec. 3 (27) (i) of the Indian Stamp (West Bengal Second Amendment) Act, 1962 (West Ben. Act XXX of 1962).

²Item (b) of the "Exemptions" was omitted by sec. 3 (27) (ii), *ibid.*

(Schedule IA.)

SCHEDULE IA.—*contd.*

Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.

Description of Instrument.

Proper
Stamp-duty.35. *Lease—concl'd.**Exemptions—concl'd.*

Explanation.—When a lessee undertakes to pay any recurring charge, such as Government revenue, the landlord's share of cesses or the owner's share of municipal rates or taxes, which is by law recoverable from the lessor, the amount so agreed to be paid by the lessee shall be deemed to be part of the rent

36. **Letter of Allotment of shares** in any Company or proposed Company or in respect of any loan to be raised by any Company or proposed Company.

Twenty naye paise.

See also Certificate or other Document (No. 19).

* * * * *

Letter of Guarantee. *See* Agreement (No. 5).

38. **Letter of License**, that is to say, any agreement between a debtor and his creditors that the latter shall, for a specified time, suspend their claims and allow the debtor to carry on business at his own discretion.

⁷[Rupees twenty-two and fifty naye paise.]

39. **Memorandum of Association of a Company—**⁵[I of 1956.]

- (a) if accompanied by articles of association under ³[section 26 of the Companies Act, 1956];

[Rupees forty five.]

⁶[(b) if not so accompanied—

- (i) where the nominal share capital does not exceed one lakh of rupees;

⁷[Rupees one hundred.]

- (ii) where the nominal share capital exceeds one lakh of rupees.

⁸[Rupees one hundred and sixty.]

Exemption.

VII of 1913. Memorandum of any association not formed for profit and registered under section 26 of the Indian Companies Act, 1913.

¹Article 36 was inserted by sec. 3 (28) of the Indian Stamp (West Bengal Second Amendment) Act, 1962 (West Ben. Act. XXX of 1962).

²Substituted for the words "Fifteen rupees" by sec. 3 (29), *ibid.*

³Substituted for the words and figures "section 17 of the Indian Companies Act, 1913" by sec. 3 (30) (iv), *ibid.*

⁴Substituted for the words "Thirty rupees" by sec. 3 (30) (i), *ibid.*

⁵Substituted for the figures and word "VII of 1913", in the marginal note, by sec. 3(30) (v), *ibid.*

⁶Clause (b) was substituted for the original clause (b) by sec. 7 (15) of the Indian Stamp (Bengal Amendment) Act, 1935 (Ben. Act XII of 1935).

⁷Substituted for the words "Eighty rupees" by sec. 3 (30) (ii) of the Indian Stamp (West Bengal Second Amendment) Act, 1962 (West Ben. Act XXX of 1962).

⁸Substituted for the words "One hundred and thirty rupees" by sec. 3 (30) (iii), *ibid.*

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(Schedule IA.)

SCHEDULE IA.—*contd.*

Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.

Description of Instrument.	Proper Stamp-duty.
140. Mortgage-deed , not being an Agreement relating to deposit of title-deeds, pawn or pledge (No. 6), Bottomry Bond (No. 16), Mortgage of a Crop (No. 41), Respondentia Bond (No. 56), or Security Bond (No. 57):—	
(a) when possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given;	The same duty as a Conveyance (No. 23), for a consideration equal to the amount secured by such deed.
(b) when possession is not given or agreed to be given as aforesaid;	The same duty as a Bond (No. 15), for the amount secured by such deed.
<i>Explanation.</i> —A mortgagor who gives to the mortgagee a power-of-attorney to collect rents of a lease of the property mortgaged or part thereof, is deemed to give possession within the meaning of this article,	
(c) when a collateral or auxiliary or additional or substituted security or by way of further assurance for the abovementioned purpose where the principal or primary security is duly stamped—	
for every sum secured not exceeding Rs. 1,000	² [Rupee one and fifty naye paise.]
and for every Rs. 1,000 or part thereof secured in excess of Rs. 1,000.	³ [Rupee one and fifty naye paise.]

Exemptions.

- | | |
|--|------------------------------|
| (1) Instruments executed by persons taking advances under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884, or by their sureties as security for the repayment of such advances. | XIX of 1883,
XII of 1884. |
| (2) Letter of hypothecation accompanying a bill of exchange. | |

¹See foot-note 1 on page 824, *ante*.

²Substituted for the words "Twelve annas" by sec. 3 (31) (i) of the Indian Stamp (West Bengal Second Amendment) Act, 1962 (West Ben. Act XXX of 1962).

³Substituted for the words "One rupee" by sec. 3 (31) (ii), *ibid*.

(Schedule IA.)

SCHEDULE IA.—*contd.*

Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.

Description of Instrument.	Proper Stamp-duty.
41. Mortgage of a Crop , including any instrument evidencing an agreement to secure the repayment of a loan made upon any mortgage of a crop, whether the crop is or is not in existence at the time of the mortgage—	
(a) when the loan is repayable not more than three months from the date of the instrument—	
for every sum secured not exceeding Rs. 200;	¹ [Twenty naye paise.]
and for every Rs. 200 or part thereof secured in excess of Rs. 200;	¹ [Twenty naye paise.]
(b) when the loan is repayable more than three months but not more than eighteen months from the date of the instrument—	
for every sum secured not exceeding Rs. 100;	² [Forty naye paise.]
and for every Rs. 100 or part thereof secured in excess of Rs. 100.	² [Forty naye paise.]
42. Notarial Act , that is to say, any instrument, endorsement, note, attestation, certificate, or entry not being a Protest (No. 50), made or signed by a Notary Public in the execution of the duties of his office, or by any other person lawfully acting as a Notary Public. <i>See also Protest of Bill or Note (No. 50).</i>	³ [Rupees three.]
43. Note or Memorandum , sent by a broker or agent to his principal intimating the purchase or sale on account of such principal—	
(a) of any goods exceeding in value twenty rupees	⁴ [Forty naye paise.]
⁵ (b) of any stock or marketable security exceeding in value twenty rupees but not being a Government security;	⁶ [Twenty naye paise] for every Rs. 5,000 or part thereof of the value of the stock or security.

¹Substituted for the words "One and a half annas" by sec. 3 (32) (i) of the Indian Stamp (West Bengal Second Amendment) Act, 1962 (West Ben. Act XXX of 1962).

²Substituted for the words "Four annas" by sec. 3 (32) (ii), *ibid.*

³Substituted for the words "Two rupees" by sec. 3 (33), *ibid.*

⁴Substituted for the words "Four annas" by sec. 3 (34) (i), *ibid.*

⁵Clauses (b) and (c) were substituted for the original clause (b) by sec. 7 (18) (ii) of the Indian Stamp (Bengal Amendment) Act, 1935 (Ben. Act XII of 1935).

⁶Substituted for the words "Two annas" by sec. 3 (34) (ii) of the Indian Stamp (West Bengal Second Amendment) Act, 1962 (West Ben. Act XXX of 1962).

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(Schedule IA.)

SCHEDULE IA.—*contd.*

Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.

Description of Instrument.	Proper Stamp-duty.
43. Note or Memorandum— <i>concl'd.</i>	
¹ (c) of a Government security ...	Subject to a maximum of ² [rupees thirty, twenty naye paise] for every Rs. 10,000 or part thereof of the value of the security.
44. Note of Protest by the Master of a Ship. See also Protest by the Master of a Ship (No. 51).	³ [Rupee one and fifty naye paise.]
* * * * *	* * * * *
Partition—Instrument of [as defined by section 2(15).]	<p>The same duty as a Bond (No. 15) for the amount of the value of the separated share or shares of the property.</p> <p><i>N.B.</i>—The largest share remaining after the property is partitioned (or if there are two or more shares, of equal value and not smaller than any of the other shares, then one of such equal shares) shall be deemed to be that from which the other shares are separated:</p> <p>Provided always that—</p> <p>(a) when an instrument of partition containing an agreement to divide property in severalty is executed and a partition is effected in pursuance of such agreement, the duty chargeable upon the instrument effecting such partition shall be reduced by the amount of duty paid in respect of the first instrument, but shall not be less than ⁴[Rupee one and fifty naye paise;]</p>

¹See foot-note 5 on page 846, *ante*.

²Substituted for the words "Twenty rupees two annas" by sec. 3 (34) (iii) of the Indian Stamp (West Bengal Second Amendment) Act, 1962 (West Ben. Act XXX of 1962).

³Substituted for the words "One rupee" by sec. 3 (35), *ibid*.

(Schedule IA.)

SCHEDULE IA.—contd.

Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.

Description of Instrument.	Proper Stamp-duty.
45. Partition —Instrument of [as defined by section 2 (15)]— <i>concl.</i>	<p>(b) where land is held on Revenue Settlement for a period not exceeding thirty years and paying the full assessment, the value for the purpose of duty shall be calculated at not more than five times the annual revenue;</p> <p>(c) where a final order for effecting a partition passed by any Revenue-authority or any Civil Court, or an award by an arbitrator directing a partition, is stamped with the stamp required for an instrument of partition, and an instrument of partition in pursuance of such order or award is subsequently executed, the duty on such instrument shall not exceed ¹[Rupee one and fifty naye paise].</p>
46. Partnership —	
A.—Instrument of—	
(a) where the capital of the partnership does not exceed Rs. 500;	² [Rupees ten.]
(b) in any other case ...	³ [Rupees thirty.]
B.—Dissolution of— ...	⁴ [Rupees fifteen.]
Pawn or pledge. See Agreement relating to deposit of title-deeds, pawn or pledge (No. 6).	* * * *

¹See foot-note 3 on page 847, *ante*.

²Substituted for the words "Five rupees" by sec. 3(36) (i) of the Indian Stamp (West Bengal Second Amendment) Act, 1962 (West Ben. Act XXX of 1962).

³Substituted for the words "Twenty rupees" by sec. 3 (36) (ii), *ibid*.

⁴Substituted for the words "Ten rupees" by sec. 3(36) (iii), *ibid*.

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(Schedule IA.)

SCHEDULE IA.—*contd.*

Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.

Description of Instrument.	Proper Stamp-duty.
48. Power-of-Attorney [as defined by section 2 (21)], not being a proxy—	
(a) when executed for the sole purpose of procuring the registration of one or more documents in relation to a single transaction or for admitting execution of one or more such documents;	¹ [Rupee one and fifty naye paise.]
(b) when required in suits or proceedings under the Presidency Small Cause Courts Act, 1882;	¹ [Rupee one and fifty naye paise.] XV of 1882.
(c) when authorising one person or more to act in a single transaction other than the case mentioned in clause (a);	² [Rupees three.]
(d) when authorising not more than five persons to act jointly and severally in more than one transaction or generally;	³ [Rupees fifteen.]
(e) when authorising more than five but not more than ten persons to act jointly and severally in more than one transaction or generally;	⁴ [Rupees thirty.]
(f) when given for consideration and authorising the attorney to sell any immovable property;	The same duty as a C o n v e y - a n c e (No. 23) for the amount of the consideration.
(g) in any other case	⁵ [Rupees three] for each person authorised.
	N.B.—The term "Registration" includes every operation incidental to registration under the Indian Registration Act, 1908. XVI of 1908.

¹Substituted for the words "One rupee" by sec. 3 (37) (i) of the Indian Stamp (West Bengal Second Amendment) Act, 1962 (West Ben. Act XXX of 1962).

²Substituted for the words "Two rupees" by sec. 3 (37) (ii), *ibid.*

³Substituted for the words "Ten rupees" by sec. 3 (37) (iii), *ibid.*

⁴Substituted for the words "Twenty rupees" by sec. 3 (37) (iv), *ibid.*

(Schedule IA.)

SCHEDULE IA.—*contd.*

Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.

Description of Instrument.	Proper Stamp-duty.
<p>48. Power-of-Attorney—<i>concl'd.</i> <i>Explanation.</i>—For the purposes of this article more persons than one when belonging to the same firm shall be deemed to be one person.</p>	* * *
<p>50. Protest of Bill or Note, that is to say, any declaration in writing made by a Notary Public, or other person lawfully acting as such, attesting the dishonour of a bill of exchange or promissory note.</p>	[Rupees three.]
<p>51. Protest by the Master of a Ship, that is to say, any declaration of the particulars of her voyage drawn up by him with a view to the adjustment of losses or the calculation of averages, and every declaration in writing made by him against the charterers or the consignees for not loading or unloading the ship, when such declaration is attested or certified by a Notary Public or other person lawfully acting as such.</p>	[Rupees three.]
<p><i>See also Note of Protest by the Master of a Ship (No. 44).</i></p>	
<p>54. Reconveyance of Mortgaged property— (a) if the consideration for which the property was mortgaged does not exceed Rs. 1,000;</p>	<p>The same duty as a Conveyance (No. 23) for the amount of such consideration as set forth in the reconveyance.</p>
<p>(b) in any other case ...</p>	<p>[Rupees twenty-two and fifty naye paise.]</p>
<p>55. Release, that is to say, any instrument (not being such a release as is provided for by section 23A), whereby a person renounces a claim upon another person or against any specified property— (a) if the amount or value of the claim does not exceed Rs. 1,000;</p>	<p>The same duty as a Bond (No. 15) for such amount or value as set forth in the release.</p>
<p>(b) in any other case ...</p>	[Rupees fifteen.]
<p>¹Substituted for the words "Two rupees" by sec. 3 (38) of the Indian Stamp (West Bengal Second Amendment) Act, 1962 (West Ben. Act XXX of 1962).</p>	
<p>²Substituted for the words "Two rupees" by sec. 3 (39), <i>ibid.</i></p>	
<p>³See footnote 1 on page 824, <i>ante.</i></p>	
<p>⁴Substituted for the words "Fifteen rupees" by sec. 3 (40) of the Indian Stamp (West Bengal Second Amendment) Act, 1962 (West Ben. Act XXX of 1962).</p>	
<p>⁵Substituted for the words "Ten rupees" by sec. 3 (41), <i>ibid.</i></p>	

of 1899.]

(Schedule IA.)

SCHEDULE IA.—*contd.*

Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.

Description of Instrument.	Proper Stamp-duty.
56. Respondentia Bond , that is to say, any instrument securing a loan on the cargo laden or to be laden on board a ship and making repayment contingent on the arrival of the cargo at the port of destination.	The same duty as a Bottomry Bond (No. 16) for the amount of the loan secured.
Revocation of any Trust or Settlement. See Settlement (No. 58); Trust (No. 64).	
57 Security-Bond or Mortgage-Deed , executed by way of security ¹ [for the due discharge of a liability, or] for the due execution of an office, or to account for money or other property received by virtue thereof, or executed by a surety to secure the due performance of a contract—	
(a) when the amount secured does not exceed Rs. 1,000;	The same duty as a Bond (No. 15) for the amount secured.
(b) in any other case	² [Rupees fifteen.]
<i>Exemptions.</i>	
Bond or other instrument when executed—	
(a) by headmen nominated under rules framed in accordance with the Bengal Irrigation Act, 1876, section 99, for the due performance of their duties under that Act;	Ben. Act III of 1876.
(b) by any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital, or any other object of public utility shall not be less than a specified sum per mensem;	
** * * * *	
(d) executed by persons taking advances under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884, or by their sureties, as security for the repayment of such advances;	XIX of 1883. XII of 1884.

¹Inserted by section 2(I) of the Indian Stamp (Bengal Amendment) Act, 1939 (Ben. Act VII of 1939).

²Substituted for the words "Ten rupees" by sec. 3 (42) (i), of the Indian Stamp (West Bengal Second Amendment) Act, 1962 (West Ben. Act XXX of 1962).

³Item (c) under the heading "Exemptions" was omitted by sec. 3 (42) (ii), *ibid.*

(Schedule IA.)

SCHEDULE IA.—*contd.*

Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.

Description of Instrument.	Proper Stamp-duty.
57. Security-Bond or Mortgage-Deed—<i>concl'd.</i> <i>Exemptions—concl'd.</i>	
(e) executed by ¹ [servants of the Government] ² or their sureties to secure the due execution of an office, or the due accounting for money or other property received by virtue thereof.	
³58. Settlement— A—Instrument of (including a deed of dower)	<p>The same duty as a Bottomry Bond (No. 16) for a sum equal to the amount or value of the property settled as set forth in such settlement:</p> <p>Provided that, where an agreement to settle is stamped with the stamp required for an instrument of settlement, and an instrument of settlement in pursuance of such agreement is subsequently executed, the duty on such instrument shall not exceed ⁴[rupee one and twenty-five naye paise.]</p>
<p style="text-align: center;"><i>Exemptions.</i></p> <p>(a) Deed of dower executed on the occasion of a marriage between Muhammadans.</p> <p style="text-align: center;">* * * * *</p>	

¹These words were substituted for the words "officers of Government" by the Bengal Stamp (Amendment) Act, 1922 (Ben. Act III of 1922) as adapted by para. 3 and Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

²See foot-note 5 on page 757, *ante*.

³See foot-note 1 on page 824, *ante*.

⁴Substituted for the words "One rupee" by sec. 3 (43) (i) of the Indian Stamp (West Bengal Second Amendment) Act, 1962 (West Ben. Act XXX of 1962).

⁵Item (b) under the heading "Exemptions" was omitted by sec. 3 (43) (ii), *ibid*.

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SCHEDULE IA.—*contd.*

Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.

Description of Instrument.	Proper Stamp-duty.
58. Settlement—<i>concl'd.</i> B.—Revocation of—	The same duty as a Bottomry Bond (No. 16) for a sum equal to the amount or value of the property concerned, as set forth in the instrument of Revocation, but not exceeding ¹ [rupees twenty-two and fifty naye paise.]
<i>See also</i> Trust (No. 64).	
59. Share Warrants to bearer issued under the ² [Companies Act, 1956.]	One and a half times the duty payable on a Conveyance (No. 23) for a consideration equal to the nominal amount of the shares specified in the warrant. ³ [I of 1956.]
<i>Exemptions.</i>	
Share warrant when issued by a company in pursuance of the ³ [Companies Act, 1956], ⁴ [section 114], to have effect only upon payment, as composition for that duty, to the Collector of Stamp-revenue of—	
(a) One and a half <i>per centum</i> of the whole subscribed capital of the company; or (b) if any company which has paid the said duty or composition in full, subsequently issues an addition to its subscribed capital—one and a half <i>per centum</i> of the additional capital so issued.	Ten naye paise.
60. Shipping Order for or relating to the conveyance of goods on board of any vessel.	Ten naye paise.
61. Surrender of Lease— (a) when the duty with which the lease is chargeable does not exceed seven rupees eight annas;	The duty with which such lease is chargeable.
(b) in any other case	⁵ [Rupees ten.]
<i>Exemption.</i>	
Surrender of lease, when such lease is exempted from duty.	

¹Substituted for the words "Fifteen rupees" by sec. 3 (43) (iii) of the Indian Stamp (West Bengal Second Amendment) Act, 1962 (West Ben. Act XXX of 1962).

²Substituted for the figures and word "VII of 1913", in the marginal note, by sec. 3 (44) (ii), *ibid.*

³Substituted for the words and figures "Indian Companies Act, 1913" by sec. 3 (44) (i), *ibid.*

⁴Substituted for the word and figures "section 43" by sec. 3 (44) (iii), *ibid.*

⁵Article 60 was inserted by sec. 3 (45), *ibid.*

⁶Substituted for the words "Seven rupees eight annas" by sec. 3 (46), *ibid.*

(Schedule IA.)

SCHEDULE IA.—*contd.*

Stamp-duty on certain Instruments under the Bengal Stamp
(Amendment) Act, 1922 or the Indian Stamp (Bengal
Amendment) Act, 1935.

Description of Instrument.	Proper Stamp-duty.
62. Transfer (whether with or without consideration)—	
(a) of shares in an incorporated company or other body corporate;	One-half of the duty payable on a Conveyance (No. 23) for a consideration equal to the value of the share.
(b) of debentures, being marketable securities, whether the debenture is liable to duty or not, except debentures provided for by section 8 ¹ ;	One-half of the duty payable on a Conveyance (No. 23) for a consideration equal to the face amount of the debenture.
(c) of any interest secured by a bond, mortgage-deed ¹ [in respect of which duty has been paid under Article No. 40] or policy of insurance,—	
(i) if the duty on such bond, mortgage-deed or policy does not exceed five rupees;	The duty with which such bond, mortgage-deed or policy of insurance is chargeable.
(ii) in any other case—	² [Rupees fifteen.]
(d) of any property under the Administrator-General's Act, 1913, section 25;	³ [Rupees twenty.]
(e) of any trust-property without consideration from one trustee to another trustee, or from a trustee to a beneficiary.	⁴ [Rupees ten] or such smaller amount as may be chargeable under clauses (a) to (c) of this article.

Exemptions.

Transfers by endorsement—

- (a) of a bill of exchange, cheque or promissory note;
- (b) of a bill of lading, delivery order, warrant for goods, or other mercantile document of title goods;
- (c) of a policy of insurance;
- (d) of securities of the ¹[Central Government]. See also section 8.

¹Inserted by section 2(2) of the Indian Stamp (Bengal Amendment) Act, 1939 (Ben. Act VII of 1939).

²Substituted for the words "Ten rupees" by sec. 3 (47) (i) of the Indian Stamp (West Bengal Second Amendment) Act, 1962 (West Ben. Act XXX of 1962).

³Substituted for the words "Fifteen rupees" by sec. 3 (47) (ii), *ibid.*

⁴Substituted for the words "Seven rupees eight annas" by sec. 3 (47) (iii), *ibid.*

⁵These words were substituted for the words "Government of India" by paragraph 4. (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

[8 of 1899.] 10A]

(Schedule IA.)

SCHEDULE IA.—*contd.*

Stamp-duty on certain Instruments under the Bengal Stamp (Amendment) Act, 1922 or the Indian Stamp (Bengal Amendment) Act, 1935.

Description of Instrument.	Proper Stamp-duty.
163. Transfer of Lease by way of assignment, and not by way of under-lease.	The same duty as a Conveyance (No. 23) for a consideration equal to the amount of the consideration for the transfer.
<i>Exemption.</i>	
Transfer of any lease exempt from duty.	
64. Trust—	
A.— DECLARATION OF —of, or concerning, any property when made by any writing not being a Will.	The same duty as a Bottomry Bond (No. 16) for a sum equal to the amount or value of the property concerned, as set forth in the instrument, but not exceeding ² [rupees twenty-five.]
B.— REVOCATION OF —of, or concerning any property when made by any instrument other than a Will.	The same duty as a Bottomry Bond (No. 16) for a sum equal to the amount or value of the property concerned, as set forth in the instrument, but not exceeding ³ [rupees twenty-five.]

See also Settlement (No. 58).

Valuation. See Appraisement (No. 8).

Vakil. See Entry as a Vakil (No. 30).

65. **Warrant for Goods**, that is to say, any instrument evidencing the title of any person therein named, or his assigns, or the holder thereof, to the property in any goods lying in or upon any deck, warehouse or wharf, such instrument being signed or certified by or on behalf of the person in whose custody such goods may be.

⁴[Seventy-five naye paise.]

¹See foot-note 1 on page 824, *ante*.

²Substituted for the words "rupees twenty-five eight annas" by sec. 3 (2) of the Indian Stamp (West Bengal Amendment) Act, 1964 (West Ben. Act XVII of 1964).

³Substituted for the words "fifteen rupees" by sec. 3 (48) (ii), *ibid*.

⁴Substituted for the words "Eight annas" by sec. 3 (49), *ibid*.

[Act II of 1899.]**(Schedule II.)**

*Schedule II.—[Enactments repealed.]—Rep. by sec. 3 and
Schedule II of the Repealing and Amending Act, 1914
(X of 1914).*

Act VI of 1908

(The Explosive Substances Act, 1908)¹

AMENDED

Act III of 1951.
Ben. Act XXI of 1932.
Ben. Act VII of 1934.

ADAPTED

- (a) The Government of India (Adaptation of Indian Laws) Order, 1937.
- (b) The Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948.
- (c) The Adaptation of Laws Order, 1950.

[8th June, 1908.]

An Act further to amend the law relating to explosive substances.

WHEREAS it is necessary further to amend the law relating to explosive substances; It is hereby enacted as follows:

Short title,
extent and
applica-
tion.

1. (1) This Act may be called the Explosive Substances Act, 1908.

“(2) It extends to the whole of India^{3*} and applies also to citizens of India [outside India].”

Defini-
tion of “
explosive
sub-
stance”.

2. In this Act the expression “explosive substance” shall be deemed to include any materials for making any explosive substance; also any apparatus, machine, implement or material used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance; also any part of any such apparatus, machine or implement.

Punish-
ment for
causing
explosion
likely to
endanger
life or pro-
perty.

3. Any person who unlawfully and maliciously causes by any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment for a term which may extend to ten years, to which fine may be added.

4. Any person who unlawfully and maliciously—

Punish-
ment for
attempt to
cause ex-
plosion,
or for
making or
keeping ex-
plosive
with
intent to
endanger
life or pro-
perty.

¹For Statement of Objects and Reasons, see Gazette of India, 1908, Pt. V, page 170, and for Proceedings in Council, see *ibid.*, 1908, Pt. VI, page 128.

The Act has been extended to Berar by the Berar Laws Act, 1941 (IV of 1941), and has been declared to be in force in the Sonthal Parganas by notification under sec. 3 (3) (a) of the Sonthal Parganas Settlement Regulation, 1872 (III of 1872), see Calcutta Gazette, 1909, Pt. I, page 639; in the Khondmals District by the Khondmals Laws Regulation, 1936 (IV of 1936), sec. 3 and Sch.; and in the Angul District by the Angul Laws Regulation, 1936 (V of 1936), sec. 3 and Sch.

²Subs. by para. 3 and the First Schedule of the Adaptation of Laws Order, 1950, for the original sub-section (2), as amended by para. 3 and the Schedule of the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948.

³The words “except Part B States” were omitted by sec. 3 and the Sch. of the Part B States (Laws) Act, 1951 (III of 1951).

⁴Subs. *ibid.*, for the words “wherever they may be”.

[Act VI

(Sections 5A, 5A.)

- (a) does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance, an explosion in '[India] of a nature likely to endanger life or to cause serious injury to property; or
- (b) makes or has in his possession or under his control any explosive substance with intent by means thereof to endanger life, or cause serious injury to property in '[India], or to enable any other person by means thereof to endanger life or cause serious injury to property in '[India];

shall, whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not, be punished with transportation for a term which may extend to twenty years, to which fine may be added, or with imprisonment for a term which may extend to seven years, to which fine may be added.

5. Any person who makes or knowingly has in his possession or under his control any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punishable with transportation for a term which may extend to fourteen years, to which fine may be added, or with imprisonment for a term which may extend to five years, to which fine may be added.

Punishment for making or possessing explosives under suspicious circumstances.

³5A. Notwithstanding anything contained in section 3, section 4, or section 5, if an offence under any of these sections is tried by Commissioners appointed under the Bengal Criminal Law Amendment Act, 1925, or by a Special Magistrate under the Bengal Suppression of Terrorist Outrages Act, 1932, any person found guilty of such offence shall be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment for a term which may extend to fourteen years, to which fine may be added.

Enhanced punishment for offences under sections 3, 4 and 5 in certain cases.

Ben. Act
XII of
1932.

¹The words "the Provinces" were first substituted for the words "British India" by para. 3 (2) of the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948. Thereafter the words 'a Part A State or a Part C State' were substituted for the words "the Provinces" by para. 3 and the First Schedule of the Adaptation of Laws Order, 1950, and lastly the word "India" was substituted for the words "a Part A State or a Part C State" by sec. 3 and the Schedule of the Part B States (Laws) Act, 1951 (III of 1951).

²The words "the Provinces" were first substituted for the words "British India" by para. 3 (2) of the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948. Thereafter the words "any such State" were substituted for the words "the Provinces" by para. 3 and the First Schedule of the Adaptation of Laws Order, 1950, and lastly the word "India" was substituted for the words "any such State" by sec. 3 and the Schedule of the Part B States (Laws) Act, 1951 (III of 1951).

³Sec. 5A was inserted by sec. 5 of the Bengal Criminal Law (Arms and Explosives) Act, 1932 (Ben. Act XXI of 1932).

of 1908.]

(Sections 5B—7.)

¹5B. Notwithstanding anything contained in this Act, any person who makes or has in his possession any explosive substance under circumstances indicating that he intended that such explosive substance should be used for the commission of any offence of murder shall, if he is tried by Commissioners appointed under the Bengal Criminal Law Amendment Act, 1925, be punished with death, or with transportation for life or any shorter term, to which fine may be added, or with imprisonment for a term which may extend to fourteen years, to which fine may be added.

Enhanced punishment in certain cases.

6. Any person who by the supply of or solicitation for money, the providing of premises, the supply of materials, or in any manner whatsoever, procures, counsels, aids, abets, or is accessory to, the commission of any offence under this Act shall be punished with the punishment provided for the offence.

Punishment of abettors.

7. No Court shall proceed to the trial of any person for an offence against this Act except with the consent of " * * * the [Central Government].

Restriction on trial of offences.

¹Sec. 5B was inserted by sec. 5 of the Bengal Criminal Law Amendment Act, 1934 (Ben. Act VII of 1934).

²The words "the Local Government of" were omitted by para. 3 and the First Schedule of the Government of India (Adaptation of Indian Laws) Order, 1937.

³Substituted for the words "Governor General in Council", by para. 4 (1), *ibid*.

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THE PRESIDENCY-TOWNS INSOLVENCY ACT, 1909

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Act III of 1909. (The Presidency-Towns Insolvency Act, 1909.)¹

AMENDED

/Act XI 1920.
Act IX of 1926.
Act XXXIV of 1926.
Act XI of 1927.
Act XIX of 1927.
Act III of 1929.
Act X of 1930.
Act III of 1950.
Act LVIII of 1960.
Ben. Act XVIII of 1936.

REPEALED IN PART

Act X of 1914.

ADAPTED

- (a) The Government of India (Adaptation of Indian Laws) Order, 1937.
- (b) The Government of India (Adaptation of Indian Laws) Supplementary Order, 1937.
- (c) The Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948.
- (d) The Adaptation of Laws Order, 1950.
- (e) The Adaptation of Laws (No. 2) Order, 1956.

[12th March, 1909].

An Act to amend the Law of Insolvency in the Presidency-
towns* * *.

WHEREAS it is expedient to amend the law relating to insolvency in the Presidency-towns * * *; It is hereby enacted as follows:—

PRELIMINARY

1. (1) This Act may be called the Presidency-towns Insolvency Act, 1909. Short title and commencement.
- (2) It shall come into force on the first day of January, 1910.
2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.
 - (a) “creditor” includes a decree-holder;
 - (b) “debt” includes a judgment-debt, and “debtor” includes a judgment-debtor;

¹For Statement of Objects and Reasons, see the Gazette of India, 1908, Pt. V, page 275; for Report of Select Committee, see *ibid.*, 1909, Pt. V, page 3; and for Proceedings in Council, see *ibid.*, 1908, Pt. VI, pages 41 and 182, and *ibid.*, 1909, Pt. VI, pages 12 and 22.

The Act has been amended in Bombay by Bom. Acts 20 of 1933 and 15 of 1939; and in Madras by Mad. Act 5 of 1943.

²The words “and the town of Rangoon” were omitted by para. 3 and the First Schedule of the Government of India (Adaptation of Indian Laws) Order, 1937.

³The words “towns of Rangoon and Karachi” were first substituted for the words “town of Rangoon” by sec. 2 of the Insolvency (Amendment) Act, 1926 (IX of 1926) and thereafter the words “town of” were substituted for the words “town of Rangoon and” by para. 3 and the First Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937. Then again the words “and the town of Karachi” were omitted, by para. 3 and the First Schedule to the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948.

*(Preliminary.—Part I.—Constitution and Powers of Court.
—Secs. 3—5.)*

- (c) "official assignee" includes an acting official assignee²[and a deputy official assignee, whether permanent or acting];
- (d) "prescribed" means prescribed by rules;
- (e) "property" includes any property over which or the profits of which any person has a disposing power which he may exercise for his own benefit;
- (f) "rules" means rules made under this Act;
- (g) "secured creditor" includes a landlord who under any enactment for the time being in force has a charge on land for the rent of that land;
- (h) "the Court" means the Court exercising jurisdiction under this Act; * * *
- (i) "transfer of property" includes a transfer of any interest therein and any charge created thereon;
- [(j) "States" means all the territories,⁵[which, immediately before the 1st November, 1956, were comprised] within Part A States and Part C States.]

PART I**CONSTITUTION AND POWERS OF COURT***Jurisdiction*

Courts having jurisdiction in insolvency.

3. The Courts having jurisdiction in insolvency under this Act shall be "[the High Courts at Calcutta, Madras and Bombay].

Jurisdiction to be exercised by a single Judge.

4. All matters in respect of which jurisdiction is given by this Act shall be ordinarily transacted and disposed of by or under the direction of one of the Judges of the Court, and the Chief Justice⁶ * * * shall, from time to time, assign a Judge for that purpose.

Exercise of jurisdiction in chambers.

5. Subject to the provisions of this Act and of rules, the Judge of a Court exercising jurisdiction in insolvency may exercise in chambers the whole or any part of his jurisdiction.

¹Clauses (bb) and (bbb), which were inserted by sec. 3 of the Insolvency (Amendment) Act, 1926 (IX of 1926), were omitted by para. 3 and the First Schedule to the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948.

²Added by sec. 2 of the Insolvency Law (Amendment) Act, 1930 (X of 1930).

³The word "and" was omitted by sec. 3 and the Second Schedule of the Repealing and Amending Act, 1960 (LVIII of 1960).

⁴Claus: (j) was inserted by para. 3 and the First Schedule of the Adaptation of Laws Order, 1950.

⁵Substituted for the words "for the time being comprised" by para. 3 and the Schedule of the Adaptation of Laws (No. 2) Order, 1956.

⁶Substituted by para. 3 and the First Schedule of the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948, as amended by sec. 4 of the Insolvency (Amendment) Act, 1926 (IX of 1926) and para. 3 and the First Schedule of the Government of India (Adaptation of Indian Laws) Order, 1917.

⁷The words "Judicial Commissioner" were first substituted for the words "Chief Judge" in secs. 4 and 6 (1) by secs. 5 and 6, respectively, of the Insolvency (Amendment) Act, 1926 (IX of 1926). Thereafter the words "or Judicial Commissioner" were omitted by para. 3 and the First Schedule of the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948,

of 1909.]

(Part I.—Constitution and Powers of Court.—Secs. 6—8.)

6. (1) The Chief Justice * * * may, from time to time, direct that, in any matters in respect of which jurisdiction is given to the Court by this Act, an officer of the Court appointed by him in this behalf shall have all or any of the powers in this section mentioned; and any order made or act done by such officer in the exercise of the said powers shall be deemed the order or act of the Court.

Delegation of powers to officers of Court.

(2) The powers referred to in sub-section (1) are the following, namely:—

- (a) to hear insolvency petitions presented by debtors, and to make orders of adjudication thereon;
- (b) to hold the public examination of insolvents;
- (c) to make any order or exercise any jurisdiction which is prescribed as proper to be made or exercised in chambers;
- (d) to hear and determine any unopposed or *ex-parte* application;
- (e) to examine any person summoned by the Court under section 36.

(3) An officer appointed under this section shall not have power to commit for contempt of Court.

7. Subject to the provisions of this Act, the Court shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, which may arise in any case of insolvency coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case:

Power of Court to decide all questions arising in insolvency.

¹[Provided that, unless all the parties otherwise agree, the power hereby given shall, for the purpose of deciding any matter arising under section 36, be exercised only in the manner and to the extent provided in that section.]

Appeals

8. (1) The Court may review, rescind or vary any order made by it under its insolvency jurisdiction.

Appeals in insolvency.

(2) Orders in insolvency matters shall, at the instance of any person aggrieved, be subject to appeal as follows, namely:—

- (a) an appeal from an order made by an officer of the Court empowered under section 6 shall lie to the Judge assigned under section 4 for the transaction and disposal of matters in insolvency and no further appeal shall lie except by leave of such Judge;
- (b) save as otherwise provided in clause (a), an appeal from an order made by a Judge in the exercise of the jurisdiction conferred by this Act shall lie in the same way and be subject to the same provisions as an

¹The words "Judicial Commissioner" were first substituted for the words "Chief Judge" in secs. 4 and 6 (1) by secs. 5 and 6, respectively, of the Insolvency (Amendment) Act, 1926 (IX of 1926). Thereafter the words "or Judicial Commissioner" were omitted by para. 3 and the First Schedule of the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948.

²Added by sec. 2 of the Presidency-towns Insolvency (Amendment) Act, 1927 (XIX of 1927).

[Act III]

*(Part II.—Proceedings from act of Insolvency to Discharge.—
Secs. 9, 10.)*

appeal from an order made by a Judge in the exercise of the ordinary original civil jurisdiction of the Court.

PART II**PROCEEDINGS FROM ACT OF INSOLVENCY TO DISCHARGE***Acts of insolvency*

Acts of insolvency. 9. A debtor commits an act of insolvency in each of the following cases, namely:—

- (a) if, in '[the States] or elsewhere, he makes a transfer of all or substantially all his property to a third person for the benefit of his creditors generally;
- (b) if, in '[the States] or elsewhere, he makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors;
- (c) if, in '[the States] or elsewhere, he makes any transfer of his property or of any part thereof, which would, under this or any other enactment for the time being in force, be void as a fraudulent preference if he were adjudged an insolvent;
- (d) if, with intent to defeat or delay his creditors,—
 - (i) he departs or remains out of '[the States],
 - (ii) he departs from his dwelling-house or usual place of business or otherwise absents himself,
 - (iii) he secludes himself so as to deprive his creditors of the means of communicating with him;
- (e) if any of his property has been sold or attached for a period of not less than twenty-one days in execution of the decree of any Court for the payment of money;
- (f) if he petitions to be adjudged an insolvent;
- (g) if he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts;
- (h) if he is imprisoned in execution of the decree of any Court for the payment of money.

Explanation.—For the purposes of this section, the act of an agent may be the act of the principal, even though the agent have no specific authority to commit the act.

Order of adjudication

Power to adjudicate. 10. Subject to the conditions specified in this Act, if a debtor commits an act of insolvency, an insolvency petition may be presented either by a creditor or by the debtor, and the Court may on such petition make an order (hereinafter called an order of adjudication) adjudging him an insolvent.

Explanation.—The presentation of a petition by the debtor shall be deemed an act of insolvency within the meaning of this section, and on such petition the Court may make an order of adjudication.

¹The words "the Provinces" were first substituted for the words "British India" by para. 3 (2) of the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948. Thereafter the word "States" was substituted for the word "Provinces" by para. 4 (1) of the Adaptation of Laws Order, 1950.

of 1909.]

(Part II.—Proceedings from act of Insolvency to Discharge.—
Secs. 11—13.)

11. The Court shall not have jurisdiction to make an order of adjudication, unless— Restrictions on jurisdiction.

- (a) the debtor is, at the time of the presentation of the insolvency petition, imprisoned in execution of the decree of a Court for the payment of money in any prison to which debtors are ordinarily committed by the Court in the exercise of its ordinary original jurisdiction; or
- (b) the debtor, within a year before the date of the presentation of the insolvency petition, has ordinarily resided or had a dwelling-house or has carried on business either in person or through an agent within the limits of the ordinary original civil jurisdiction of the Court; or
- (c) the debtor personally works for gain within those limits; or
- (d) in the case of a petition by or against a firm of debtors the firm has carried on business within a year before the date of the presentation of the insolvency petition within those limits.

12. (1) A creditor shall not be entitled to present an insolvency petition against a debtor unless— Conditions on which creditor may petition.

- (a) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and
- (b) the debt is a liquidated sum payable either immediately or at some certain future time, and
- (c) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition:

¹[Provided that where the said period of three months referred to in clause (c) expires on a day when the Court is closed, the insolvency petition may be presented on the day on which the Court re-opens.]

(2) If the petitioning creditor is a secured creditor, he shall in his petition either state that he is willing to relinquish his security for the benefit of the creditors in the event of the debtor being adjudged insolvent or give an estimate of the value of the security. In the latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were an unsecured creditor.

13. (1) A creditor's petition shall be verified by affidavit of the creditor, or of some person on his behalf having knowledge of the facts. Proceedings and order on creditor's petition.

¹Added by sec. 2 of the Insolvency Law (Amendment) Act, 1950 (III of 1950).

[Act III]*(Part II.—Proceedings from act of Insolvency to Discharge.—
Sec. 14.)*

(2) At the hearing the Court shall require proof of—

- (a) the debt of the petitioning creditor, and
- (b) the act of insolvency, or, if more than one act of insolvency is alleged in the petition, some one of the alleged acts of insolvency.

(3) The Court may adjourn the hearing of the petition and order service thereof on the debtor.

(4) The Court shall dismiss the petition—

- (a) if it is not satisfied with the proof of the facts referred to in sub-section (2); or
- (b) if the debtor appears and satisfies the Court that he is able to pay his debts, or that he has not committed an act of insolvency or that for other sufficient cause no order ought to be made.

(5) The Court may make an order of adjudication if it is satisfied with the proof above referred to, or if on a hearing adjourned under sub-section (3) the debtor does not appear and service of the petition on him is proved, unless in its opinion the petition ought to have been presented before some other Court having insolvency jurisdiction.

(6) Where the debtor appears on the petition and denies that he is indebted to the petitioner, or that he is indebted to such an amount as would justify the petitioner in presenting a petition against him, the Court, on such security (if any) being given as the Court may require for payment to the petitioner of any debt which may be established against the debtor in due course of law, and of the costs of establishing the debt, may, instead of dismissing the petition, stay all proceedings on the petition for such time as may be required for trial of the question relating to the debt.

(7) Where proceedings are stayed, the Court may, if by reason of the delay caused by the stay of proceedings or for any other cause it thinks just, make an order of adjudication on the petition of some other creditor, and shall thereupon dismiss, on such terms as it thinks just, the petition on which proceedings have been stayed as aforesaid.

(8) A creditor's petition shall not, after presentation, be withdrawn without the leave of the Court.

Conditions
on which
debtor may
petition.

14. ¹[(1)] A debtor shall not be entitled to present an insolvency petition unless—

- (a) his debts amount to five hundred rupees, or
- (b) he has been arrested and imprisoned in execution of the decree of any Court for the payment of money, or
- (c) an order of attachment in execution of such a decree has been made and is subsisting against his property.

¹The original section 14 was re-numbered as sub-section (1) of that section by sec. 2 of the Insolvency (Amendment) Act, 1927 (XI of 1927).

of 1909.]

(Part II.—Proceedings from act of Insolvency to Discharge.—
Secs. 15—17.)

v of 1920. ¹[(2) A debtor in respect of whom an order of adjudication, whether made under this Act or under the Provincial Insolvency Act, 1920, has been annulled owing to his failure to apply or to prosecute an application for his discharge shall not be entitled to present an insolvency petition without the leave of the Court by which the order of adjudication was annulled. Such Court shall not grant leave unless it is satisfied either that the debtor was prevented by any reasonable cause from presenting or prosecuting his application, as the case may be, or that the petition is founded on facts substantially different from those contained in the petition on which the order of adjudication was made.]

15. (1) A debtor's petition shall allege that the debtor is unable to pay his debts, and, if the debtor proves that he is entitled to present the petition, the Court may thereupon make an order of adjudication, unless in its opinion the petition ought to have been presented before some other Court having insolvency jurisdiction. Proceedings and order on debtor's petition.

(2) A debtor's petition shall not, after presentation, be withdrawn without the leave of the Court.

²[(3) On the making of the order admitting his petition, a debtor shall—

(a) unless the Court otherwise directs, produce all his books of account, and

(b) file such lists of creditors and debtors and afford such assistance to the Court as may be prescribed, failing which the Court may dismiss his petition.]

16. The Court may, if it is shown to be necessary for the protection of the estate, at any time after the presentation of an insolvency petition and before an order of adjudication is made, appoint the official assignee to be interim receiver of the property of the debtor, or of any part thereof, and direct him to take immediate possession thereof or any part thereof, and the official assignee shall thereupon have such of the powers conferable on a receiver appointed under the Code of Civil Procedure, 1908, as may be prescribed. Discretionary powers as to appointment of interim receiver.

17. On the making of an order of adjudication, the property of the insolvent wherever situate shall vest in the official assignee and shall become divisible among his creditors, and thereafter, except as directed by this Act, no creditor to whom the insolvent is indebted in respect of any debt provable in insolvency shall, during the pendency of the insolvency proceedings, have any remedy against the property of the insolvent in respect of the debt or shall commence any suit or other legal proceeding except with the leave of the Court and on such terms as the Court may impose: Effect of order of adjudication.

¹Added by sec. 2 of the Insolvency (Amendment) Act, 1927 (11 of 1927).

²Added by sec. 3 of the Presidency-towns Insolvency (Amendment) Act, 1927 (XIX of 1927).

[Act III]

(Part II.— *Proceedings from act of Insolvency to Discharge.*
—Sections 18—19.)

Provided that this section shall not affect the power of any secured creditor to realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed.

Stay of proceedings.

18. (1) The Court may, at any time after the making of an order of adjudication, stay any suit or other proceeding pending against the insolvent before any Judge or Judges of the Court or in any other Court subject to the superintendence of the Court.

(2) An order made under sub-section (1) may be served by sending a copy thereof, under the seal of the Court, by post to the address for service of the plaintiff or other party prosecuting such suit or proceeding, and notice of such order shall be sent to the Court before which the suit or proceeding is pending.

(3) Any Court in which proceedings are pending against a debtor may, on proof that an order of adjudication has been made against him under this Act, either stay the proceedings or allow them to continue on such terms as it may think just.

Control over insolvency proceedings in subordinate Courts.

¹[18A. (1) The Court may, at any time after the presentation of an insolvency petition, stay any insolvency proceedings pending against the debtor in any Court subject to the superintendence of the Court, and may, at any time after the making of an order of adjudication, annul an adjudication against the debtor made by any such Court.

(2) Where an adjudication is annulled under sub-section (1), all sales and dispositions of property and payments duly made and all acts done by the Court whose order is annulled, or by the receiver appointed by it or other person acting under his authority, shall be valid, but the property vested in such Court or receiver shall vest in the official assignee, and the Court may make such direction in regard to the custody of such property as it thinks fit.

(3) Notice of the order annulling an adjudication under sub-section (1) shall be published in the ²[Official Gazette] and in such other manner as may be prescribed.]

Power to appoint special manager.

19. (1) If in any case the Court, having regard to the nature of the debtor's estate or business or to the interests of the creditors generally, is of opinion that a special manager of the estate or business ought to be appointed to assist the official assignee, the Court may appoint a manager thereof accordingly to act for such time as the Court may authorize, and to have such powers of the official assignee as may be entrusted to him by the official assignee or as the Court may direct.

(2) The special manager shall give security and furnish accounts in such manner as the Court may direct, and shall receive such remuneration as the Court may determine.

¹Ins. by sec. 3 of the Insolvency Law (Amendment) Act, 1930 (X of 1930).

²Substituted for the words "local official Gazette" by para. 4 (I) of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1909.]

(Part II.—Proceedings from act of Insolvency to Discharge.—
Secs. 20—23.)

20. Notice of every order of adjudication, stating the name, address and description of the insolvent, the date of the adjudication, the Court by which the adjudication is made and the date of presentation of the petition, shall be published ¹* * * in the ²[Official Gazette] and in such other manner as may be prescribed.

Advertise-
ment of
order of ad-
judication.

Annulment of Adjudication

21. (1) Where, in the opinion of the Court, a debtor ought not to have been adjudged insolvent, or where it is proved to the satisfaction of the Court that the debts of the insolvent are paid in full, ³[the Court shall, on the application of any person interested,] by order annul the adjudication [and the Court may, of its own motion or on application made by the official assignee or any creditor, annul any adjudication made on the petition of a debtor who was, by reason of the provisions of sub-section (2) of section 14, not entitled to present such petition].

Power for
Court to
annul adju-
dication in
certain
cases.

(2) For the purposes of this section, any debt disputed by a debtor shall be considered as paid in full, if the debtor enters into a bond, in such sum and with such sureties as the Court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt, with costs, and any debt due to a creditor who cannot be found or cannot be identified shall be considered as paid in full if paid into Court.

22. Where it is proved to the satisfaction of the Court that insolvency proceedings are pending in any other [Court in India] whether within or without [the States] against the same debtor and that the property of the debtor can be more conveniently distributed by such other Court, the Court may annul the adjudication or may stay all proceedings thereon.

Concurrent
proceedings
in Courts
in India.

23. (1) Where an adjudication is annulled, all sales and dispositions of property and payments duly made, and all acts theretofore done, by the official assignee or other person acting under his authority, or by the Court, shall be valid, but the property of the debtor who was adjudged insolvent shall vest in such person as the Court may appoint, or, in default of any such appointment, shall revert to the debtor to the extent of his right or interest therein on such terms and subject to such conditions (if any) as the Court may declare by order.

Proce-
dings
on annul-
ment.

¹The words "in the Gazette of India and" were omitted by para. 3 and the First Schedule of the Government of India (Adaptation of Indian Laws) Order, 1937.

²See foot-note 2 on page 874, *ante*.

³Subs. by sec. 3 of the Insolvency Law (Amendment) Act, 1950 (3 of 1950), s. 3, for the words "the Court may, on the application of any person interested."

⁴Added by sec. 3 of the Insolvency (Amendment) Act, 1927 (XI of 1927).

⁵Substituted for the words "British Court" by para. 3 and the First Schedule of the Adaptation of Laws Order, 1950.

⁶See foot-note 2 on page 870, *ante*.

[Act III]

(Part II.—*Proceedings from act of Insolvency to Discharge.*—
Secs. 24, 25.)

(2) Where a debtor has been released from custody under the provisions of this Act and the order of adjudication is annulled as aforesaid, the Court may, if it thinks fit, recommit the debtor to his former custody, and the jailor or keeper of the prison to whose custody such debtor is so recommitted shall receive such debtor into his custody according to such recommitment, and thereupon all processes which were in force against the person of such debtor at the time of such release as aforesaid shall be deemed to be still in force against him as if such order had not been made.

(3) Notice of the order annulling an adjudication shall be published * * * in the [Official Gazette] and in such other manner as may be prescribed.

Proceedings consequent on order of adjudication

Insolvent's
schedule.

24. (1) Where an order of adjudication is made against a debtor, he shall prepare and submit to the Court a schedule verified by affidavit, in such form and containing such particulars of and in relation to his affairs as may be prescribed.

(2) The schedule shall be so submitted within the following times, namely:—

(a) if the order is made on the petition of the debtor, within thirty days from the date of the order.

(b) if the order is made on the petition of a creditor, within thirty days from the date of service of the order.

(3) If the insolvent fails, without reasonable excuse, to comply with the requirements of this section, the Court may, on the application of the official assignee or of any creditor, make an order for his committal to the civil prison.

(4) If the insolvent fails to prepare and submit any such schedule as aforesaid, the official assignee may, at the expense of the estate, cause such a schedule to be prepared in manner prescribed.

Protection
order.

25. (1) Any insolvent who shall have submitted his schedule as aforesaid may apply to the Court for protection, and the Court may, on such application, make an order for the protection of the insolvent from arrest or detention.

(2) A protection order may apply either to all the debts mentioned in the schedule or to any of them as the Court may think proper, and may commence and take effect at and for such time as the Court may direct, and may be revoked or renewed as the Court may think fit.

(3) A protection order shall protect the insolvent from being arrested or detained in prison for any debt to which such order shall apply, and any insolvent arrested or detained contrary to the terms of such order shall be entitled to his release:

¹See foot-note 1 on page 875, *ante*.

²See foot-note 2 on page 874, *ante*.

of 1909.]

*(Part II.—Proceedings from act of Insolvency to Discharge.—
Secs. 26, 27.)*

Provided that no such order shall operate to prejudice the right of any creditor in the event of such order being revoked or the adjudication annulled.

(4) Any creditor shall be entitled to appear and oppose the grant of a protection order, but the insolvent shall be *prima facie* entitled to such order on production of a certificate signed by the official assignee that he has so far conformed to the provisions of this Act.

(5) The Court may make a protection order before an insolvent has submitted his schedule if it thinks it necessary to do so in the interests of the creditors.

26. (1) At any time after the making of an order of adjudication against an insolvent, the Court, on the application of a creditor or of the official assignee, may direct that a meeting of creditors shall be held to consider the circumstances of the insolvency and the insolvent's schedule and his explanation thereof and generally as to the mode of dealing with the property of the insolvent. Meetings of creditors

(2) With respect to the summoning of and proceedings at a meeting of creditors the rules in the First Schedule shall be observed.

27. (1) Where the Court makes an order of adjudication it shall hold a public sitting on a day to be appointed by the Court, of which notice shall be given to creditors in the prescribed manner, for the examination of the insolvent, and the insolvent shall attend thereat, and shall be examined as to his conduct, dealings and property. Public examination of the insolvent.

(2) The examination shall be held as soon as conveniently may be after the expiration of the time for the filing of the insolvent's schedule.

(3) Any creditor who has tendered a proof or a legal practitioner on his behalf may question the insolvent concerning his affairs and the causes of his failure.

(4) The official assignee shall take part in the examination of the insolvent; and for the purpose thereof, subject to such directions as the Court may give, may be represented by a legal practitioner.

(5) The Court may put such questions to the insolvent as it may think expedient.

(6) The insolvent shall be examined upon oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him. Such notes of the examination as the Court thinks proper shall be taken down in writing and shall be read over either to or by the insolvent and signed by him, and may thereafter be used in evidence against him and shall be open to the inspection of any creditor at all reasonable times.

[Act III]*(Part II.—Proceedings from act of Insolvency to Discharge.—
Secs. 28, 29.)*

(7) When the Court is of opinion that the affairs of the insolvent have been sufficiently investigated, it shall, by order, declare that his examination is concluded, but such order shall not preclude the Court from directing further examination of the insolvent whenever it may deem fit to do so.

(8) Where the insolvent is a lunatic or suffers from any such mental or physical affliction or disability as in the opinion of the Court makes him unfit to attend his public examination, or is a woman who according to the customs and manners of the country ought not to be compelled to appear in public, the Court may make an order dispensing with such examination, or directing that the insolvent be examined on such terms, in such manner and at such place as to the Court seems expedient.

Composition and schemes of arrangement

Submission
of proposal
and accept-
ance by
creditors.

28. (1) An insolvent may at any time after the making of an order of adjudication submit a proposal for a composition in satisfaction of his debts or a proposal for a scheme of arrangement of his affairs in the prescribed form, and such proposal shall be submitted by the official assignee to a meeting of creditors.

(2) The official assignee shall send to each creditor who is mentioned in the schedule, or who has tendered a proof before the meeting, a copy of the insolvent's proposals with a report thereon, and if on the consideration of such proposal the majority in number and three-fourths in value of all the creditors whose debts are proved resolve to accept the proposal, the same shall be deemed to be duly accepted by the creditors.

(3) The insolvent may at the meeting amend the terms of his proposal if the amendment is in the opinion of the official assignee calculated to benefit the general body of creditors.

(4) Any creditor who has proved his debt may assent to or dissent from the proposal by a letter, in the prescribed form, addressed to the official assignee so as to be received by him not later than the day preceding the meeting, and any such assent or dissent shall have effect as if the creditor had been present and had voted at the meeting.

Approval of
proposal by
Court.

29. (1) The insolvent or the official assignee may after the proposal is accepted by the creditors apply to the Court to approve it, and notice of the time appointed for hearing the application shall be given to each creditor who has proved.

(2) Except where an estate is being summarily administered or special leave of the Court has been obtained, the application shall not be heard until after the conclusion of the public examination of the insolvent. Any creditor who has proved may be heard by the Court in opposition to the application notwithstanding that he may at a meeting of creditors have voted for the acceptance of the proposal.

of 1909.]

(Part II.—Proceedings from act of Insolvency to Discharge.—
Secs. 30, 31.)

(3) The Court shall, before approving the proposal, hear a report of the official assignee as to the terms thereof and as to the conduct of the insolvent and any objections which may be made by or on behalf of any creditor.

(4) Where the Court is of opinion that the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors or in any case in which the Court is required to refuse the insolvent's discharge, the Court shall refuse to approve the proposal.

(5) Where any facts are proved on proof of which the Court would be required either to refuse, suspend or attach conditions to the debtor's discharge, the Court shall refuse to approve the proposal unless it provides reasonable security for payment of not less than four annas in the rupee on all the unsecured debts provable against the debtor's estate.

(6) No composition or scheme shall be approved by the Court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of an insolvent.

(7) In any other case the Court may either approve or refuse to approve the proposal.

30. (1) If the Court approves the proposal, the terms shall be embodied in an order of the Court, and an order shall be made annulling the adjudication, and the provisions of section 23, sub-sections (1) and (3), shall thereupon apply, and the composition or scheme shall be binding on all the creditors so far as relates to any debt due to them from the insolvent and provable in insolvency. Order on approval.

(2) The provisions of the composition or scheme may be enforced by the Court on application by any person interested, and any disobedience of an order of the Court made on the application shall be deemed a contempt of Court.

31. (1) If default is made in the payment of any instalment due in pursuance of any composition or scheme, approved as aforesaid, or if it appears to the Court that the composition or scheme cannot proceed without injustice or undue delay or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, on application by any person interested, re-adjudge the debtor insolvent and annul the composition or scheme, and the property of the debtor shall thereupon vest in the official assignee but without prejudice to the validity of any transfer or payment duly made or of anything duly done under or in pursuance of the composition or scheme. Power to re-adjudge debtor insolvent.

(2) Where a debtor is re-adjudged insolvent under sub-section (1), all debts provable in other respects which have been contracted before the date of such re-adjudication shall be provable in the insolvency.

[Act III]*(Part II.—Proceedings from act of Insolvency to Discharge.—
Secs. 32—34.)*

Limitation
of effect of
com-
position
or scheme.

32. Notwithstanding the acceptance and approval of a composition or scheme, the composition or scheme shall not be binding on any creditor so far as regards a debt or liability from which, under the provisions of this Act, the insolvent would not be discharged by an order of discharge in insolvency, unless the creditor assents to the composition or scheme.

Control over person and property of insolvent

Duties of
insolvent as
to discovery
and realiza-
tion of prop-
erty.

33. (1) Every insolvent shall, unless prevented by sickness or other sufficient cause, attend any meeting of his creditors which the official assignee may require him to attend, and shall submit, to such examination and give such information as the meeting may require.

(2) The insolvent shall—

- (a) give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively,
- (b) submit to such examination in respect of his property or his creditors,
- (c) wait at such times and places on the official assignee or special manager,
- (d) execute such powers-of-attorney, transfers and instruments, and
- (e) generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors,

as may be required by the official assignee or special manager or may be prescribed or be directed by the Court by any special order or orders made in reference to any particular case, or made on the occasion of any special application by the official assignee or special manager, or any creditor or person interested.

(3) The insolvent shall aid, to the utmost of his power, in the realization of his property and the distribution of the proceeds among his creditors.

(4) If the insolvent wilfully fails to perform the duties imposed upon him by this section, or to deliver up possession to the official assignee of any part of his property, which is divisible amongst his creditors under this Act and which is for the time being in his possession or under his control, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of Court, and may be punished accordingly.

Arrest of
insolvent.

34. (1) The Court may, either of its own motion or at the instance of the official assignee or of any creditor, by warrant addressed to any police-officer or prescribed officer of the Court, cause an insolvent to be arrested, and committed to the civil prison or if in prison to be detained until such time as the Court

of 1909.]

(Part II.—*Proceedings from act of Insolvency to Discharge.*—
Secs. 35, 36.)

may order, under the following circumstances, namely:—

- (a) if it appears to the Court that there is probable reason for believing that he has absconded or is about to abscond with a view of avoiding examination in respect of his affairs, or of otherwise avoiding, delaying or embarrassing proceedings in insolvency against him; or
- (b) if it appears to the Court that there is probable reason for believing that he is about to remove his property with a view of preventing or delaying possession being taken of it by the official assignee, or that there is probable reason for believing that he has concealed or is about to conceal or destroy any of his property or any books, documents or writings which might be of use to his creditors in the course of his insolvency; or
- (c) if he removes any property in his possession above the value of fifty rupees without the leave of the official assignee.

(2) No payment or composition made or security given after arrest made under this section shall be exempt from the provisions of this Act relating to fraudulent preferences.

35. Where the official assignee has been appointed interim receiver or an order of adjudication is made, the Court, on the application of the official assignee, may, from time to time, order that for such time, not exceeding three months, as the Court thinks fit, all post letters, whether registered or unregistered, parcels and money orders addressed to the debtor at any place or places mentioned in the order for redirection, shall be re-directed, or delivered by the Postal authorities in [the States], to the official assignee, or otherwise as the Court directs; and the same shall be done accordingly.

Redirection of letters.

36. (1) The Court may, on the application of the official assignee or of any creditor who has proved his debt, at any time after an order of adjudication has been made, summon before it in such manner as may be prescribed the insolvent or any person known or suspected to have in his possession any property belonging to the insolvent, or supposed to be indebted to the insolvent, or any person whom the Court may deem capable of giving information respecting the insolvent, his dealings or property; and the Court may require any such person to produce any documents in his custody or power relating to the insolvent, his dealings or property.

Discovery of insolvent's property.

(2) If any person so summoned, after having been tendered a reasonable sum, refuses to come before the Court at the time appointed, or refuses to produce any such document, having no lawful impediment made known to the

¹See foot-note 1 on page, 870, *ante*.

[Act III]*(Part II.—Proceedings from act of Insolvency to Discharge.—
Secs. 37, 38.)*

Court at the time of its sitting and allowed by it, the Court may, by warrant, cause him to be apprehended and brought up for examination.

(3) The Court may examine any person so brought before it concerning the insolvent, his dealings or property, and such person may be represented by a legal practitioner.

(4) '[If on his examination any such person admits] that he is indebted to the insolvent, the Court may, on the application of the official assignee, order him to pay to the official assignee, at such time and in such manner as to the Court seems expedient, the amount in which he is indebted, or any part thereof, either in full discharge of the whole amount or not, as the Court thinks fit, with or without costs of the examination.

(5) '[If on his examination any such person admits] that he has in his possession any property belonging to the insolvent, the Court may, on the application of the official assignee, order him to deliver to the official assignee that property, or any part thereof, at such time, in such manner and on such terms as to the Court may seem just.

(6) Orders made under sub-sections (4) and (5) shall be executed in the same manner as decrees for the payment of money or for the delivery of property under the Code of Civil Procedure 1908, respectively.

V of 1908.

(7) Any person making any payment or delivery in pursuance of an order made under sub-section (4) or sub-section (5) shall by such payment or delivery be discharged from all liability whatsoever in respect of such debt or property.

Power to
issue com-
missions.

37. The Court shall have the same powers to issue commissions and letters of request for the examination on commission or otherwise of any person liable to examination under section 36 as it has for the examination of witnesses under the Code of Civil Procedure, 1908.

Discharge of Insolvent

Discharge
of insol-
vent.

38. (1) An insolvent may, at any time after the order of adjudication, apply to the Court for an order of discharge, and the Court shall appoint a day for hearing the application, but, save where the public examination of the insolvent has been dispensed with under the provisions of this Act, the application shall not be heard until after such examination has been concluded. The application shall be heard in open Court.

(2) On the hearing of the application, the Court shall take into consideration any report of the official assignee as to the insolvent's conduct and affairs, and, subject to the provisions of section 39, may—

(a) grant or refuse an absolute order of discharge, or

¹Substituted by sec. 4 of the Presidency-towns Insolvency (Amendment) Act, 1927 (XIX of 1927), for "If, on the examination of any such person, the Court is satisfied".

of 1909.]

*(Part II.—Proceedings from act of Insolvency to Discharge.—
Sec. 39.)*

- (b) suspend the operation of the order for a specified time, or
- (c) grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the insolvent, or with respect to his after-acquired property.

XLV of 1860. 39. (1) The Court shall refuse the discharge in all cases where the insolvent has committed any offence under this Act, or under sections 421 to 424 of the Indian Penal Code, and shall, on proof of any of the facts hereinafter mentioned, either—

Cases in which the Court must refuse an absolute discharge.

- (a) refuse the discharge; or
- (b) suspend the discharge for a specified time; or
- (c) suspend the discharge until a dividend of not less than four annas in the rupee has been paid to the creditors; or
- (d) require the insolvent as a condition of his discharge to consent to a decree being passed against him in favour of the official assignee for any balance or part of any balance of the debts provable under the insolvency which is not satisfied at the date of his discharge; such balance or part of any balance of the debts to be paid out of the future earnings or after-acquired property of the insolvent in such manner and subject to such conditions as the Court may direct; but in that case the decree shall not be executed without leave of the Court, which leave may be given on proof that the insolvent has since his discharge acquired property or income available for payment of his debts.

(2) The facts hereinbefore referred to are—

- (a) that the insolvent's assets are not of a value equal to four annas in the rupee on the amount of his unsecured liabilities, unless he satisfies the Court that the fact that the assets are not of such value has arisen from circumstances for which he cannot justly be held responsible;
- (b) that the insolvent has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his insolvency;
- (c) that the insolvent has continued to trade after knowing himself to be insolvent;
- (d) that the insolvent has contracted any debt provable under this Act without having at the time of contracting it any reasonable or probable ground of expectation (the burden of proving which shall lie on him) that he would be able to pay it;

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(Part II.—Proceedings from act of Insolvency to Discharge.—
Secs. 40—42.)

- (e) that the insolvent has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities;
 - (f) that the insolvent has brought on or contributed to his insolvency by rash or hazardous speculations or by unjustifiable extravagance in living or by gambling, or by culpable neglect of his business affairs;
 - (g) that the insolvent has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any suit properly brought against him;
 - (h) that the insolvent has within three months preceding the time of presentation of the petition incurred unjustifiable expense by bringing a frivolous or vexatious suit;
 - (i) that the insolvent has within three months preceding the date of the presentation of the petition, when unable to pay his debts as they become due, given an undue preference to any of his creditors;
 - (j) that the insolvent has concealed or removed his books or his property or any part thereof or has been guilty of any other fraud or fraudulent breach of trust.
- (3) The power of suspending and of attaching conditions to an insolvent's discharge may be exercised concurrently.

(4) On any application for discharge the report of the official assignee shall be *prima facie* evidence and the Court may presume the correctness of any statement contained therein.

Hearing of
application for
discharge.

40. Notice of the appointment by the Court of the day for hearing the application for discharge shall be published in the prescribed manner and sent one month at least before the day so appointed to each creditor who has proved, and the Court may hear the official assignee and may also hear any creditor. At the hearing, the Court may put such questions to the insolvent and receive such evidence as it may think fit.

Power to
annul adju-
dication on
failure to
apply for
discharge.

41. If an insolvent does not appear on the day so appointed for hearing his application for discharge or if an insolvent shall not apply to the Court for an order of discharge within such time as may be prescribed, the Court, on the application of the official assignee or of a creditor or of its own motion, may annul the adjudication or make such other order as it may think fit, and the provisions of section 23 shall apply on such annulment.

Renewal of
application
and variation
of terms of
order.

42. (1) Where the Court refuses the discharge of the insolvent it may, after such time and in such circumstances as may be prescribed, permit him to renew his application.

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(Part II.—Proceedings from act of Insolvency to Discharge.—
Secs. 43—45.)

(2) Where an order of discharge is made subject to conditions and at any time after the expiration of two years from the date of the order the insolvent shall satisfy the Court that there is no reasonable probability of his being in a position to comply with the terms of such order, the Court may modify the terms of the order, or of any substituted order, in such manner and upon such conditions as it may think fit.

43. A discharged insolvent shall, notwithstanding his discharge, give such assistance as the official assignee may require in the realization and distribution of such of his property as is vested in the official assignee, and, if he fails to do so, shall be guilty of a contempt of Court; and the Court may also, if it thinks fit, revoke his discharge, but without prejudice to the validity of any sale, disposition or payment duly made or thing duly done subsequent to the discharge, but before its revocation.

Duty of discharged insolvent to assist in realization of property.

44. In either of the following cases, that is to say:—

Fraudulent settlements.

(1) in the case of a settlement made before and in consideration of marriage where the settlor is not at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement; or

(2) in the case of any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest (not being money or property of or in right of his wife);

if the settlor is adjudged insolvent or compounds or arranges with his creditors, and it appears to the Court that the settlement, covenant or contract was made in order to defeat or delay creditors, or was unjustifiable having regard to the state of the settlor's affairs at the time when it was made, the Court may refuse or suspend an order of discharge or grant an order subject to conditions or refuse to approve a composition or arrangement.

45. (1) An order of discharge shall not release the insolvent from—

Effect of order of discharge.

(a) any debt due to the '[Government];

(b) any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party; or

(c) any debt or liability in respect of which he has obtained forbearance by any fraud to which he was a party; or

¹Substituted for the word "Crown" by para. 4 (1) of the Adaptation of Laws Order, 1950.

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(Part II.—*Proceedings from act of Insolvency to Discharge.*
—Part III.—*Administration of Property.*—Sec. 46.)

(d) any liability under an order for maintenance made under section 488 of the Code of Criminal Procedure, 1898. V of 1898.

(2) Save as otherwise provided by sub-section (1), an order of discharge shall release the insolvent from all debts provable in insolvency.

(3) An order of discharge shall be conclusive evidence of the insolvency, and of the validity of the proceedings therein.

(4) An order of discharge shall not release any person who at the date of the presentation of the petition was a partner or co-trustee with the insolvent or was jointly bound or had made any joint contract with him, or any person who was surety or in the nature of a surety for him.

PART III**ADMINISTRATION OF PROPERTY***Proof of debts*

Debts provable in insolvency.

46. (1) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract or breach of trust shall not be provable in insolvency.

(2) A person having notice of the presentation of any insolvency petition by or against the debtor shall not prove for any debt or liability contracted by the debtor subsequently to the date of his so having notice.

(3) Save as provided by sub-sections (1) and (2), all debts and liabilities, present or future, certain or contingent, to which the debtor is subject when he is adjudged an insolvent or to which he may become subject before his discharge by reason of any obligation incurred before the date of such adjudication, shall be deemed to be debts provable in insolvency.

(4) An estimate shall be made by the official assignee of the value of any debt or liability provable as aforesaid which by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value:

Provided that if in his opinion the value of the debt or liability is incapable of being fairly estimated, he shall issue a certificate to that effect, and thereupon the debt or liability shall be deemed to be a debt not provable in insolvency.

Explanation.—For the purposes of this section “liability” includes any compensation for work or labour done, any obligation or possibility of an obligation to pay money or money’s worth on the breach of any express or implied covenant, contract, agreement or undertaking, whether the breach does or does not occur, or is or is not likely to occur or capable of occurring, before the discharge of the debtor, and generally it includes any express or implied engagement, agreement or undertaking to pay, or capable of resulting in the payment of, money

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(Part III.—Administration of Property.—Secs. 47—49.)

or money's worth, whether the payment is, as respects amount, fixed or unliquidated; as respects time, present or future, certain or dependent on any contingency or contingencies; as to mode of valuation, capable of being ascertained by fixed rules, or as matter of opinion.

47. Where there have been mutual dealings between an insolvent and a creditor proving or claiming to prove a debt under this Act, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively: Mutual dealings and set-off.

Provided that a person shall not be entitled under this section to claim the benefits of any set-off against the property of an insolvent in any case where he had at the time of giving credit to the insolvent notice of the presentation of any insolvency petition by or against him.

48. With respect to the mode of proving debts, the right of proof by secured and other creditors, the admission and rejection of proofs, and the other matters referred to in the Second Schedule, the rules in that Schedule shall be observed. Rules as to proof of debts.

49. (1) In the distribution of the property of the insolvent there shall be paid in priority to all other debts— Priority of debts.

- (a) all debts due to the '[Government]' or to any local authority;
- (b) all salary or wages of any clerk, servant or labourer in respect of services rendered to the insolvent during four months before the date of the presentation of the petition, not exceeding three hundred rupees for each such clerk, and one hundred rupees for each such servant or labourer; and
- (c) rent due to a landlord from the insolvent: provided the amount payable under this clause shall not exceed one month's rent.

(2) The debts specified in sub-section (1) shall rank equally between themselves, and shall be paid in full, unless the property of the insolvent is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) Subject to the retention of such sums as may be necessary for the expenses of administration or otherwise, the debts specified in sub-section (1) shall be discharged forthwith in so far as the property of the insolvent is sufficient to meet them.

¹See foot-note 1 on page 885, *ante*.

[Act III]*(Part III.—Administration of Property.—Secs. 50—52.)*

(4) In the case of partners, the partnership property shall be applicable in the first instance in payment of the partnership debts, and the separate property of each partner shall be applicable in the first instance in payment of his separate debts. Where there is a surplus of the separate property of the partners, it shall be dealt with as part of the partnership property; and where there is a surplus of the partnership property, it shall be dealt with as part of the respective separate property in proportion to the rights and interests of each partner in the partnership property.

(5) Subject to the provisions of this Act, all debts proved in insolvency shall be paid rateably according to the amounts of such debts respectively and without any preference.

(6) Where there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date on which the debtor is adjudged an insolvent at the rate of six per centum per annum on all debts proved in the insolvency.

Rent due
before ad-
judica-
tion.

50. After an order of adjudication has been made no distress for rent due before such order shall be made upon the goods or effects of the insolvent, unless the order be annulled, but the landlord or party to whom the rent may be due shall be entitled to prove in respect of such rent.

Property available for payment of debts

Relation of
assignee's
title.

51. The insolvency of a debtor, whether the same takes place on the debtor's own petition or upon that of a creditor or creditors, shall be deemed to have relation back to and to commence at—

(a) the time of the commission of the act of insolvency on which an order of adjudication is made against him, or

(b) if the insolvent is proved to have committed more acts of insolvency than one, the time of the first of the acts of insolvency proved to have been committed by the insolvent within three months next preceding the date of the presentation of the insolvency petition:

Provided that no insolvency petition or order of adjudication shall be rendered invalid by reason of any act of insolvency committed anterior to the debt of the petitioning creditor.

Description of in-
solvent's
property
divisible
amongst
creditors.

52. (1) The property of the insolvent divisible amongst his creditors, and in this Act referred to as the property of the insolvent, shall not comprise the following particulars, namely:—

(a) property held by the insolvent on trust for any other person;

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(Part III.—Administration of Property.—Secs. 53, 54.)

(b) the tools (if any) of his trade and the necessary wearing apparel, bedding, cooking vessel, and furniture of himself, his wife and children, to a value, inclusive of tools and apparel and other necessities as aforesaid, not exceeding three hundred rupees in the whole.

(2) Subject as aforesaid, the property of the insolvent shall comprise the following particulars, namely:—

(a) all such property as may belong to or be vested in the insolvent at the commencement of the insolvency or may be acquired by or devolve on him before his discharge;

(b) the capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the insolvent for his own benefit at the commencement of his insolvency or before his discharge; and

(c) all goods being at the commencement of the insolvency in the possession, order or disposition of the insolvent, in his trade or business by the consent and permission of the true owner under such circumstances that he is the reputed owner thereof;

Provided that things in action other than debts due or growing due to the insolvent in the course of his trade or business shall not be deemed goods within the meaning of clause (c):

Provided also that the true owner of any goods which have become divisible among the creditors of the insolvent under the provisions of clause (c) may prove for the value of such goods.

Effect of insolvency on antecedent transactions

53. (1) Where execution of a decree has issued against the property of a debtor, no person shall be entitled to the benefit of the execution against the official assignee, except in respect of assets realized in the course of the execution by sale or otherwise [before the date of the admission of the insolvency petition].

Restric-
tion of
rights of
creditor
under exe-
cution.

(2) Nothing in this section shall affect the right of a secured creditor in respect of property against which a decree is executed.

(3) A person who in good faith purchases the property of a debtor under a sale in execution shall in all cases acquire a good title to it against the official assignee.

54. Where execution of a decree has issued against any property of a debtor which is saleable in execution, and before the sale thereof notice is given to the Court executing the decree that an order of adjudication has been made against the

Duties of
Court exe-
cuting de-
cree as to
property
taken in
execution.

¹Substituted for the words "before the date of the order of adjudication and before he had notice of the presentation of any insolvency petition by or against the debtor", by sec. 4 of the Insolvency Law (Amendment) Act, 1950 (III of 1950).

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(Part III.—Administration of Property.—Secs. 55—58.)

debtor, the Court shall, on application, direct the property, if in the possession of the Court, to be delivered to the official assignee, but the costs of the execution shall be a first charge on the property so delivered, and the official assignee may sell the property or an adequate part thereof for the purpose of satisfying the charge.

Avoidance of voluntary transfer. 55. Any transfer of property, not being a transfer made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, shall, if the transferor is adjudged insolvent within two years after the date of the transfer, be void against the official assignee.

Avoidance of preference in certain cases. 56. (1) Every transfer of property, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, with a view of giving that creditor a preference over the other creditors, shall, if such person is adjudged insolvent on a petition presented within three months after the date thereof, be deemed fraudulent and void as against the official assignee.

(2) This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the insolvent.

Protection of bona fide transactions. 57. Subject to the foregoing provisions with respect to the effect of insolvency on an execution and with respect to the avoidance of certain transfers and preferences, nothing in this Act shall invalidate in the case of an insolvency—

- (a) any payment by the insolvent to any of his creditors;
- (b) any payment or delivery to the insolvent;
- (c) any transfer by the insolvent for valuable consideration; or
- (d) any contract or dealing by or with the insolvent for valuable consideration:

Provided that any such transaction takes place before the date of the order of adjudication and that the person with whom such transaction takes place has not at the time notice of the presentation of any insolvency petition by or against the debtor.

Realization of property

Possession of property by official assignee. 58. (1) The official assignee shall, as soon as may be, take possession of the deeds, books and documents of the insolvent and all other parts of his property capable of manual delivery.

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(Part III.—Administration of Property.—Secs. 59, 60.)

(2) The official assignee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the insolvent, be in the same position as if he were a receiver of the property appointed under the Code of Civil Procedure, 1908, and the Court may on his application enforce such acquisition or retention accordingly.

(3) Where any part of the property of the insolvent consists of stock, shares in ships, shares, or any other property transferable in the books of any company, office or person, the official assignee may exercise the right to transfer the property to the same extent as the insolvent might have exercised it, if he had not become insolvent.

(4) Where any part of the property of the insolvent consists of things in action, such things shall be deemed to have been duly transferred to the official assignee.

(5) Any treasurer or other officer, or any banker, attorney or agent of an insolvent, shall pay and deliver to the official assignee all money and securities in his possession or power as such officer, banker, attorney or agent, which he is not by law entitled to retain as against the insolvent or the official assignee. If he fails so to do, he shall be guilty of a contempt of Court, and shall be punishable accordingly on the application of the official assignee.

59. (1) The Court may grant a warrant to any prescribed officer of the Court or any police-officer above the rank of a constable to seize any part of the property of an insolvent in the custody or possession of the insolvent or of any other person, and with a view to such seizure to break open any house, building or room of the insolvent where the insolvent is supposed to be, or any building or receptacle of the insolvent where any of his property is supposed to be.

Seizure of property of insolvent.

(2) Where the Court is satisfied that there is reason to believe that property of the insolvent is concealed in a house or place not belonging to him, the Court may, if it thinks fit, grant a search-warrant to any such officer, as aforesaid who may execute it according to its tenor.

60. (1) Where an insolvent is an officer of [the Indian Army or Navy], or an officer or clerk or otherwise employed or engaged in the civil service of the [Government], the official assignee shall receive for distribution amongst the creditors so much of the insolvent's pay or salary liable to attachment in execution of a decree as the Court may direct.

Appropriation of portion of pay or other income to creditors.

(2) Where an insolvent is in the receipt of a salary or income other than as aforesaid, the Court may, at any time after adjudication and from time to time, make such order

¹The words "the Royal Indian Navy" were first substituted for the words "His Majesty's Royal Indian Marine Service" by para. 3 and the First Schedule of the Government of India (Adaptation of Indian Laws) Order, 1937. Thereafter the words "the Indian Army or Navy" were substituted for the words "the Army or Navy or of the Royal Indian Navy" by para. 3 and the First Schedule of the Adaptation of Laws Order, 1950.

²See foot-note 1 on page 885, ante.

[Act III]*(Part III.—Administration of Property.—Secs. 61—64.)*

as it thinks just for the payment to the official assignee, for distribution among the creditors of so much of such salary or income as may be liable to attachment in execution of a decree, or of any portion thereof.

Vesting and transfer of property. 61. The property of the insolvent shall pass from official assignee to official assignee, and shall vest in the official assignee for the time being during his continuance in office, without any transfer whatever.

Disclaimer of onerous property. 62. (1) Where any part of the property of an insolvent consists of land of any tenure burdened with onerous covenants, of shares or stocks in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money, the official assignee may, notwithstanding that he may have endeavoured to sell or have taken possession of the property, or exercised any act of ownership in relation thereto, but subject always to the provisions hereinafter contained in that behalf, by writing signed by him, at any time within twelve months after the insolvent has been adjudged insolvent, disclaim the property:

Provided that, where any such property has not come to the knowledge of the official assignee within one month after such adjudication as aforesaid, he may disclaim the property at any time within twelve months after he has first become aware thereof.

(2) The disclaimer shall operate to determine, as from the date thereof, the rights, interest and liabilities of the insolvent and his property in or in respect of the property disclaimed, and shall also discharge the official assignee from all personal liability in respect of the property disclaimed as from the date when the property vested in him, but shall not, except so far as is necessary for the purpose of releasing the insolvent and his property and the official assignee from liability, affect the rights or liabilities of any other person.

Disclaimer of leaseholds. 63. Subject always to such rules as may be made in this behalf, the official assignee shall not be entitled to disclaim any leasehold interest without the leave of the Court; and the Court may, before or on granting such leave, require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such orders with respect to fixtures, tenant's improvements and other matters arising out of the tenancy, as the Court thinks just.

Power to call on official assignee to disclaim. 64. The official assignee shall not be entitled to disclaim any property in pursuance of section 62 in any case where an application in writing has been made to the official assignee by any person interested in the property requiring him to decide whether he will disclaim, and the official assignee has for a period of twenty-eight days after the receipt of the application, or

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(Part III.—Administration of Property.—Secs. 65, 66.)

such extended period as may be allowed by the Court, declined or neglected to give notice that he disclaims the property; and in the case of a contract, if the official assignee, after such application as aforesaid, does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.

65. The Court may, on the application of any person who is, as against the official assignee, entitled to the benefit or subject to the burden of a contract made with the insolvent, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as to the Court may seem equitable, and any damages payable under the order to any such person may be proved by him as a debt under the insolvency.

Power for Court to rescind contract.

66. (1) The Court may, on the application of any person either claiming any interest in any disclaimed property, or under any liability not discharged by this Act in respect of any disclaimed property, and on hearing such persons as it thinks fit, make an order for the vesting of the property in or delivery thereof to any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any transfer for the purpose:

Power for Court to make vesting order in respect of disclaimed property.

Provided always, that, where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in favour of any person claiming under the insolvent, whether as under-lessee or as mortgagee, except upon the terms of making such person subject to the same liabilities and obligations as the insolvent was subject to under the lease in respect of the property at the date when the insolvency petition was filed, and any under-lessee or mortgagee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and if there is no person claiming under the insolvent who is willing to accept an order upon such terms, the Court shall have power to vest the insolvent's interest in the property in any person liable either personally or in a representative character, and either alone or jointly with the insolvent, to perform the lessee's covenants in such lease, freed and discharged from all estates, incumbrances and interests created therein by the insolvent.

(2) The Court may, if it thinks fit, modify the terms prescribed by the foregoing proviso so as to make a person in whose behalf the vesting order may be made subject only to the same liabilities and obligations as if the lease had been assigned to him at the date when the insolvency petition was filed, and (if

[Act III]*(Part III.—Administration of Property.—Secs. 67—69.)*

the case no requires) as if the lease had comprised only the property comprised in the vesting order.

Persons injured by disclaimer may prove.

67. Any person injured by the operation of a disclaimer under the foregoing provisions shall be deemed to be a creditor of the insolvent to the amount of the injury, and may accordingly prove the same as a debt under the insolvency.

Duty and powers of official assignee to realization.

68. (1) Subject to the provisions of this Act, the official assignee shall, with all convenient speed, realize the property of the insolvent, and for that purpose may—

- (a) sell all or any part of the property of the insolvent;
 - (b) give receipts for any money received by him;
- and may, by leave of the Court, do all or any of the following things, namely:—
- (c) carry on the business of the insolvent so far as may be necessary for the beneficial winding up of the same;
 - (d) institute, defend or continue any suit or other legal proceeding relating to the property of the insolvent;
 - (e) employ a legal practitioner or other agent to take any proceedings or do any business which may be sanctioned by the Court;
 - (f) accept as the consideration for the sale of any property of the insolvent a sum of money payable at a future time or fully paid shares, debentures or debenture stock in any limited company subject to such stipulations as to security and otherwise as the Court thinks fit;
 - (g) mortgage or pledge any part of the property of the insolvent for the purpose of raising money or for the payment of his debts or for the purpose of carrying on the business;
 - (h) refer any dispute to arbitration, and compromise all debts, claims and liabilities, on such terms as may be agreed upon;
 - (i) divide in its existing form amongst the creditors, according to its estimated value, any property which, from its peculiar nature or other special circumstances, cannot readily or advantageously be sold.

(2) The official assignee shall account to the Court and pay over all monies and deal with all securities in such manner as is prescribed or as the Court directs.

Distribution of property

Declaration and distribution of dividends.

69. (1) The official assignee shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts.

The Presidency-towns Insolvency Act, 1909.

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(Part III.—Administration of Property.—Secs. 70—72.)

(2) The first dividend (if any) shall be declared and be distributed within [one year] after the adjudication, unless the official assignee satisfies the Court that there is sufficient reason for postponing the declaration to a later date.

(3) Subsequent dividends shall, in the absence of sufficient reason to the contrary, be declared and be payable at intervals of not more than six months.

(4) Before declaring a dividend, the official assignee shall cause notice of his intention to do so to be published in the prescribed manner, and shall also send reasonable notice thereof to each creditor mentioned in the insolvent's schedule who has not proved his debt.

(5) When the official assignee has declared a dividend, he shall send to each creditor who has proved a notice showing the amount of the dividend, and when and how it is payable, and, if required by any creditor, a statement in the prescribed form as to the particulars of the estate.

70. Where one partner in a firm, is adjudged insolvent, a creditor to whom the insolvent is indebted jointly with the other partners in the firm or any of them shall not receive any dividend out of the separate property of the insolvent until all the separate creditors have received the full amount of their respective debts. Joint and separate properties.

71. (1) In the calculation and distribution of dividends, the official assignee shall retain in his hands sufficient assets to meet— Calculation of dividends.

- (a) debts provable in insolvency and appearing from the insolvent's statements or otherwise to be due to persons resident in places so distant that in the ordinary course of communication they have not had sufficient time to tender their proofs;
- (b) debts provable in insolvency the subject of claims not yet determined;
- (c) disputed proofs or claims; and
- (d) the expenses necessary for the administration of the estate or otherwise.

(2) Subject to the provisions of sub-section (1), all money in hand shall be distributed as dividends.

72. Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any money for the time being in the hands of the official assignee any dividend or dividends which he may have failed to receive, before that money is applied to the payment of any future dividend or dividends, but he shall not be Right of creditor who has not proved debt before declaration of a dividend.

¹Substituted for the words "six months" by sec. 2 of the Presidency-towns Insolvency (Amendment) Act, 1929 (III of 1929).

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(Part III.—*Administration of Property.*—Seces. 73—76.)

entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

F i n a l 73. (1) When the official assignee has realized all the pro-
dividend. perty of the insolvent, or so much thereof as can, in his opinion,
be realized without needlessly protracting the proceedings in
insolvency, he shall, with the leave of the Court, declare a final
dividend; but, before so doing, he shall give notice in manner
prescribed to the persons whose claims to be creditors have
been notified to him but not proved that, if they do not
prove their claims, to the satisfaction of the Court, within
the time limited by the notice, he will proceed to make a final
dividend without regard to their claims.

(2) After the expiration of the time so limited, or, if the
Court on application by any such claimant grants him further
time for establishing his claim, then on the expiration of that
further time, the property of the insolvent shall be divided
among the creditors who have proved their debts, without regard
to the claims of any other persons.

No suit for 74. No suit for a dividend shall lie against the official as-
dividend. signee, but, where the official assignee refuses to pay any divi-
dend, the Court may, on the application of the creditor who is
aggrieved by such refusal, order him to pay it, and also to pay
out of his own money interest thereon at such rate as may
be prescribed for the time that it is withheld, and the costs of
the application.

Power to 75. (1) Subject to such conditions and limitations as may
allow in- be prescribed, the official assignee may appoint the insolvent
solvent to himself to superintend the management of the property of the
manage insolvent or of any part thereof, or to carry on the trade (if any)
property, of the insolvent, for the benefit of his creditors, and in any other
and allow- respect to aid in administering the property in such manner and
ance to on such terms as the official assignee may direct.
insolvent
for main-
tenance or
service.

(2) Subject as aforesaid, the Court may, from time to time,
make such allowance as it thinks just to the insolvent out of his
property, for the support of the insolvent and his family, or in
consideration of his services, if he is engaged in winding up his
estate, but any such allowance may at any time be varied or
determined by the Court.

Right of 76. The insolvent shall be entitled to any surplus remain-
insolvent ing after payment in full of his creditors, with interest, as pro-
surplus. vided by this Act and of the expenses of the proceedings taken
thereunder.

of 1990.]

(Part IV.—Official Assignees.—Sec. 77.)

PART IV

OFFICIAL ASSIGNEES

77. ¹(1) The ²[State Government] shall, after consultation with and with the concurrence of the Chief Justice, appoint substantively or temporarily a person to the office of official assignee of insolvents' estates for the High Court ³[at Calcutta] and may, after the like consultation and with the like concurrence, appoint, substantively or temporarily, a person or persons to the office of deputy official assignee for the said Court.

Appointment of official assignee and deputy official assignee of insolvents' estates.

⁴[(1A) Subject to rules made under section ⁵[112A], the deputy official assignee shall have all the powers and shall discharge all the duties and in exercise of such powers and in the discharge of such duties shall be subject to all the liabilities of the official assignee under this Act.]

(2) Every official assignee ⁶[and every deputy official assignee] shall give such security and shall be subject to such rules and shall act in such manner as may be prescribed.

¹Substituted for the original sub-section by sec. 3 (a) of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936 (Ben. Act XVIII of 1936).

The sub-section which was substituted is as follows, namely:—

“(1) (a) The Chief Justice of the High Court at Madras may from time to time appoint substantively or temporarily such person as he thinks fit to the office of official assignee of insolvents' estates and such person or persons as he thinks fit to the office of the deputy official assignee for the said Court and may, with the concurrence of a majority of the other Judges of the Court, remove the person for the time being holding any of the said offices for any cause appearing to the Court sufficient.

(b) The [State] Government of [West Bengal] shall, after consultation with, and with the concurrence of, the Chief Justice of the High Court at Calcutta, appoint substantively or temporarily a person to the office of official assignee of insolvents' estates for the said Court and may, after the like consultation and with the like concurrence, appoint substantively or temporarily a person or persons to the office of the deputy official assignee for the said Court.

(c) For the High Court at Bombay, the [State] Government of Bombay, may from time to time appoint substantively or temporarily such person as the [State] Government thinks fit to the office of official assignee of insolvents' estates and such person or persons as the [State] Government thinks fit to the office of the deputy official assignee.”

²The words “Provincial Government” were first substituted for the words “Local Government” by para. 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937. Thereafter the word “State” was substituted for the words “Provincial” by para. 4 (1) of the Adaptation of Laws Order, 1950.

³Substituted for the words “at Fort William” by para. 3 and the Eleventh Schedule to the Adaptation of Laws Order, 1950.

⁴Inserted by sec. 4 of the Insolvency Law (Amendment) Act, 1930 (X of 1930).

⁵Substituted for “112” by sec. 3 (b) of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936 (Ben. Act XVIII of 1936).

(Part IV.—Official Assignees.—Secs. 78—80.)

¹(3) Notwithstanding anything contained in sub-section (1), the person substantively or temporarily holding the office of official assignee under this Act for the High Court ²[at Calcutta] immediately before the commencement of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936, shall, without further appointment for that purpose, become the official assignee, substantive or temporary, as the case may be, as if appointed by the ³[State Government] under sub-section (1).

Ben. Act
XVIII of
1936.

Power to administer oath. 78. An official assignee may, for the purpose of affidavits verifying proofs, petitions or other proceedings under this Act, administer oaths.

Duties as regards the insolvent's conduct. 79. (1) The duties of an official assignee shall have relation to the conduct of the insolvent as well as to the administration of his estate.

(2) In particular it shall be the duty of the official assignee—

(a) to investigate the conduct of the insolvent and to report to the Court upon any application for discharge, stating whether there is reason to believe that the insolvent has committed any act which constitutes an offence under this Act or under sections 421 to 424 of the Indian Penal Code in connection with his insolvency or which would justify the Court in refusing, suspending or qualifying an order for his discharge;

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1860.

(b) to make such other reports concerning the conduct of the insolvent as the Court may direct or as may be prescribed; and

(c) to take such part and give such assistance in relation to the prosecution of any fraudulent insolvent as the court may direct or as may be prescribed.

Duly to furnish list of creditors. 80. The official assignee shall, whenever required by any creditor so to do, and on payment by the creditor of the prescribed fee, furnish and send to the creditor by post a list of the creditors showing in the list the amount of the debt due to each of the creditors.

¹Substituted for the original sub-section by sec. 3(c) of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936 (Ben. Act XVIII of 1936).

The sub-section which was substituted is as follows, namely:—

“(3) Notwithstanding anything in sub-section (1), the persons substantively or temporarily holding the office of official assignee immediately before the commencement of this Act in the Courts for the relief of Insolvent Debtors at Calcutta, Madras and Bombay respectively under the Indian Insolvency Act, 1948, shall, without further appointment for that purpose, become the official assignees, substantive or temporary, as the case may be, under this Act in the High Courts at Fort William, Madras and Bombay respectively.”

²See foot-note 3 on page 897, *ante*.

³See foot-note 2 on page 897, *ante*.

of 1909.]

(Part IV.—Official Assignees.—Secs. 81—82.)

181. The official assignee and any deputy official assignee shall, in the discharge of their functions under this Act, be under the administrative control of the ²[State Government] except in so far as they are required by or under this Act to act under the control or direction of the High Court.

Adminis-
trative con-
trol over
official
assignee
and deputy
official
assignee.

[181A. The salary, allowances, pension and conditions of service of the official assignee and of any deputy official assignee shall be such as may be prescribed by rules made under the Government of India Act, and such salary, allowances and pension shall be paid by the ²[State Government].]

Salary, al-
lowances,
pension and
conditions
of service
of official
assignee
and deputy
official
assignee.

181B. (1) The ²[State Government] may determine the number, designations and grades of officers and servants (other than employees who are paid by the day) whom the official assignee may employ for the purposes of this Act and the amount and nature of the salary, allowances and other remuneration to be paid to each such officer and servant.

Estab-
lishment of
official
assignee.

(2) The conditions of service of the officers and servants of the official assignee shall be prescribed by the ²[State Government].

(3) The salaries, allowances and other remuneration of the officers and servants of the official assignee and all other costs, charges and expenses of his establishment shall be paid by the ²[State Government].

82. [(1)]³ The Court shall call the official assignee to account for any misfeasance, neglect or omission which may appear in his accounts or otherwise, and may require the official assignee to make good any loss which the estate of the insolvent may have sustained by reason of the misfeasance, neglect or omission.

Misfea-
sance.

³(2) The revenues of the ²[State Government] shall be liable to make good all sums which the official assignee is required by order of the Court to pay under sub-section (1) in respect of any misfeasance, neglect or omission which occurred after the commencement of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936.

³(3) Nothing in sub-section (2) shall prevent the ²[State Government] from recovering any sum paid by the ²[State Gov-

¹These sections were substituted for original sec. 81 by sec. 4 of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936 (Ben. Act XVIII of 1936).

The section which was substituted is as follows, namely:—

“81. (1) Such remuneration shall be paid to the official assignee as may be prescribed.

(2) No remuneration whatever beyond that referred to in sub-section (1) shall be received by an official assignee as such.”

²See foot-note 2 on page 897, *ante*.

³Sec. 82 was re-numbered as sub-section (1) of that section and after that section as so re-numbered sub-sections (2) and (3) were added by sec. 5 of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936 (Ben. Act XVIII of 1936).

[Act III

(Part IV.—Official Assignees.—Secs. 82A—84A.)

ernment under that sub-section from the person who was holding the office of official assignee when the misfeasance, neglect or omission occurred.

Liability of State Government for costs in legal proceedings, etc.

¹82A. Where the official assignee has incurred, whether before or after the commencement of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936, in the matter of any insolvency—

Ben. Act XVIII of 1936.

(a) any costs in legal proceedings taken by him under the direction of the Court, or

(b) any civil liability, *bona fide* in the discharge of his duties,

the revenues of the ²[State Government] shall be liable for the payment of such costs or liability, in so far as the assets realized by the official assignee in respect of such insolvency are insufficient to meet such costs or liability.

Certain liabilities not to be incurred without the express direction of the Court.

¹82B. Where an insolvent's estate has no available assets, the official assignee shall not incur any costs, charges or expenses in respect of such estate without the express direction of the Court, but the Court on the application of the official assignee may empower him to spend an amount specified by the Court in payment of any costs, charges and expenses of or in connection with the realization or administration of the estate of the insolvent, and the revenues of the ²[State Government] shall be liable for the payment of such amount.

Sums paid under section 82A or section 82B to be realized from the estate of the insolvent.

¹82C. Any sum paid out of the revenues of the ²[State Government] under section 82A or section 82B in respect of an insolvent's estate shall be repaid to the ²[State Government] by the official assignee out of any assets of the estate which may subsequently become available, in priority to all other claims and charges on such assets other than fees and percentages chargeable by the official assignee under this Act.

Name under which to sue or be sued.

83. The official assignee may sue and be sued by the name of "the official assignee of the property of—, an insolvent," inserting the name of the insolvent, and by that name may hold property of every description, make contracts, enter into any engagements binding on himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office.

Office vacated by insolvency.

84. If an order of adjudication is made against an official assignee, he shall thereby vacate the office of official assignee.

Account of official assignee, investments and proceeds of investments.

³84A(1) The official assignee shall maintain an account in the prescribed manner and shall pay into such account, after making any prescribed deductions—

(a) all monies received by him in the realization of insolvents' estates, and

(b) any other sums that may be prescribed.

(2) Subject to the control of the ²[State Government], whenever the cash balance standing to the credit of the said account

¹Secs. 82A, 82B and 82C were inserted by sec. 6 of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936 (Ben. Act XVIII of 1936).

²See foot-note 2 on page 897, *ante*.

³Section 84A, was inserted by sec. 7 of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936 (Ben. Act XVIII of 1936).

of 1909.]

(Part IV.—Official Assignees.—Sec. 85.)

is, in the opinion of the official assignee in excess of the amount which is required for the time being to meet demands in respect of insolvents' estates, or to make the payments required under section 122 or any other payments that may be prescribed, the official assignee shall invest such excess in the prescribed manner.

(3) Subject to the control of the '[State Government], whenever any part of the money so invested is, in the opinion of the official assignee, required to meet any demands in respect of insolvents' estates, or to make the payments required under section 122 or any other payments that may be prescribed, the official assignee may realize such part of the said investments as may be necessary, and shall credit the proceeds of such realization to the said account.

(4) The official assignee shall transfer and pay to such authority and in such manner and at such times as may be prescribed in this behalf the proceeds of such investments, and the same shall be carried to the account and credit of the '[State Government].

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/III of
36.

(5) The provisions of sub-section (4) shall apply to the balance of the proceeds, accumulated before the commencement of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936, of the investments made by the official assignee of sums received by him in the realization of insolvents' estates, whether such balance or any part thereof has been invested or not.

(6) Subject to the provisions of sub-section (5), the provisions of sub-sections (1), (2) and (3) shall apply to all monies in the hands of the official assignee at the date of the commencement of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936, and to all investments made by him before that date.

85. (1) Subject to the provisions of this Act and to the directions of the Court, the official assignee shall, in the administration of the property of the insolvent and in the distribution thereof amongst his creditors, have regard to any resolution that may be passed by the creditors at a meeting.

Discretionary
powers and
control
thereof.

(2) The official assignee may, from time to time, summon meetings of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors, by resolution at any meeting, or the Court may direct, or whenever requested in writing to do so by one-fourth in value of the creditors who have proved.

(3) The official assignee may apply to the Court for directions in relation to any particular matter arising under the insolvency.

¹See foot-note 1 on page 897, *ante*.

[Act III]

(Part IV.—*Official Assignees.*—Secs. 86, 87.—Part V.—*Committee of Inspection.*—Secs. 88, 89.)

(4) Subject to the provisions of this Act, the official assignee shall use his own discretion in the management of the estate and its distribution among the creditors.

Appeal to Court. 86. If the insolvent or any of the creditors or any other person is aggrieved by any act or decision of the official assignee, he may appeal to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just.

Control of Court. 87. (1) If any official assignee does not faithfully perform his duties and duly observe all the requirements imposed on him by any enactment, rules or otherwise, with respect to the performance of his duties, or if any complaint is made to the Court by any creditor in regard thereto, the Court shall enquire into the matter and take such action thereon as may be deemed expedient.

(2) The Court may at any time require any official assignee to answer any enquiry made by it in relation to any insolvency in which he is engaged, and may examine him or any other person on oath concerning the insolvency.

(3) The Court may also direct an investigation to be made of the books and vouchers of the official assignee.

PART V**COMMITTEE OF INSPECTION**

Committee of inspection. 88. The Court may, if it so thinks fit, authorize the creditors who have proved, to appoint from among the creditors or holders of general proxies or general powers-of-attorney from such creditors, a committee of inspection for the purpose of superintending the administration of the insolvent's property by the official assignee:

Provided that a creditor, who is appointed a member of a committee of inspection, shall not be qualified to act until he has proved.

Control of committee of inspection over official assignee. 89. The committee shall have such powers of control over the proceedings of the official assignee as may be prescribed.

of 1909.]

(Part VI.—Procedure.—Secs. 90, 91.)

PART VI

PROCEDURE

90. (1) In proceedings under this Act the Court shall have the like powers and follow the like procedure as it has and follows in the exercise of its ordinary original civil jurisdiction: Powers of the Court.

Provided that nothing in this sub-section shall in any way limit the jurisdiction conferred on the Court under this Act.

(2) Subject to the provisions of this Act and rules, the costs of and incidental to any proceeding in the Court shall be in the discretion of the Court.

(3) The Court may at any time adjourn any proceedings before it upon such terms, if any, as it thinks fit to impose.

(4) The Court may at any time amend any written process or proceeding under this Act upon such terms, if any, as it thinks fit to impose.

(5) Where by this Act or by rules the time for doing any act or thing is limited, the Court may extend the time either before or after the expiration thereof, upon such terms, if any, as the Court thinks fit to impose.

(6) Subject to rules, the Court may in any matter take the whole or any part of the evidence either *viva voce* or by interrogatories, or upon affidavit, or by commission.

(7) For the purpose of approving a composition or scheme by joint debtors the Court may, if it thinks fit, and on the report of the official assignee that it is expedient so to do, dispense with the public examination of one of the joint debtors if he is unavoidably prevented from attending the examination by illness or absence abroad.

1* * *

91. Where two or more insolvency petitions are presented against the same debtor or against joint debtors, or where joint debtors file separate petitions, the Court may consolidate the proceedings or any of them on such terms as the Court thinks fit. Consolidation of petitions.

¹Sub-section (8) was omitted by para. 3 (1) and the Schedule of the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948.

(Part VI.—Procedure.—Secs. 92—98.)

Power to change of petition. 92. Where the petitioner does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor to whom the debtor is indebted in the amount required by this Act in the case of a petitioning creditor.

Continuance of proceedings on death of debtor. 93. If a debtor by or against whom an insolvency petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive.

Power to stay proceedings. 94. The Court may, at any time, for sufficient reason, make an order staying the proceedings under an insolvency petition, either altogether or for a limited time, on such terms and subject to such conditions as the Court thinks just.

Power to present petition against a partner. 95. Any creditor whose debt is sufficient to entitle him to present an insolvency petition against all the partners in a firm may present a petition against any one or more partners in the firm without including the others.

Power to dismiss petition against some respondents only. 96. Where there are more respondents than one to a petition, the Court may dismiss the petition as to one or more of them without prejudice to the effect of the petition as against the other or others of them.

Separate insolvency petitions against partners. 97. Where an order of adjudication has been made on an insolvency petition against or by one partner in a firm, any other insolvency petition against or by a partner in the same firm shall be presented in or transferred to the Court in which the first-mentioned petition is in course of prosecution; and such Court may give such directions for consolidating the proceedings under the petitions as it thinks just.

Suits by official assignee and insolvent's partners. 98. (1) Where a partner in a firm is adjudged insolvent, the Court may authorize the official assignee to continue or commence and carry on any suit or other proceeding in his name and that of the insolvent's partner; and any release by the partner of the debt or demand to which the proceeding relates shall be void.

(2) Where application for authority to continue or commence any suit or any other proceeding has been made under sub-section (1), notice of the application shall be given to the insolvent's partner, and he may show cause against it, and on his application the Court may, if it thinks fit,

of 1909.]

(Part VI.—*Procedure.*—Secs. 99, 100.—Part VII.—*Limitation.*—Secs. 101, 101A.)

direct that he shall receive his proper share of the proceeds of the proceeding, and if he does not claim any benefit therefrom he shall be indemnified against costs in respect thereof as the Court directs.

99. (1) Any two or more persons, being partners, or any person carrying on business under a partnership name, may take proceedings or be proceeded against under this Act in the name of the firm: **Proceedings in partnership name.**

Provided that in that case the Court may, on application by any person interested, order the names of the persons who are partners in the firm, or the name of the person carrying on business under a partnership name, to be disclosed in such manner and verified on oath or otherwise, as the Court may direct.

(2) In the case of a firm in which one partner is an infant, an adjudication order may be made against the firm other than the infant partner.

100. (1) A warrant of arrest issued by the Court may be executed in the same manner and subject to the same conditions as a warrant of arrest issued under the Code of Criminal Procedure, 1898, may be executed. **Warrants of Insolvency Courts.**

Act V of 1898.

(2) A warrant to seize any part of the property of an insolvent, issued by the Court under section 59, sub-section (1), shall be in the form prescribed, and sections 77(2) 79, 82, 83, 84 and 102 of the Code shall, so far as may be, apply to the execution of such warrant.

(3) A search-warrant issued by the Court under section 59, sub-section (2), may be executed in the same manner and subject to the same conditions as a search-warrant for property supposed to be stolen may be executed under the said Code.

PART VII

LIMITATION

101. The period of limitation for an appeal from any act or decision of the official assignee, or from an order made by an officer of the Court empowered under section 6, shall be twenty days from the date of such act, decision or order, as the case may be. **Limitation of appeals.**

[101A. Where an order of adjudication has been annulled under this Act, in computing the period of limitation prescribed for any suit or other legal proceeding (other than a suit or legal proceeding in respect of which the leave of the Court was obtained under section 17) which might have been brought **Exclusion of time in computation of period of limitation in certain cases.**

¹Inserted by sec. 5 of the Insolvency Law (Amendment) Act, 1950 (III of 1950).

[Act III]

(Part VIII.—Penalties.—Secs. 102, 103.)

but for the making of an order of adjudication under this Act, the period from the date of the order of adjudication to the date of the order of annulment shall be excluded:

Provided that nothing in this section shall apply to any suit or other legal proceeding in respect of a debt provable but not proved under this Act.]

PART VIII

PENALTIES

Undis- charged in- solvent obtaining credit. 102. An undischarged insolvent obtaining credit to the extent of fifty rupees or upwards from any person without informing such person that he is an undischarged insolvent shall, on conviction by a Magistrate, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

Punish- ment of insolvent for certain offences.

103. Any person adjudged insolvent who—

(a) fraudulently with the intent to conceal the state of his affairs or to defeat the objects of this Act,—

(i) has destroyed or otherwise wilfully prevented or purposely withheld the production of any book, paper or writing relating to such of his affairs as are subject to investigation under this Act, or

(ii) has kept or caused to be kept false books, or

(iii) has made false entries in, or withheld entries from, or wilfully altered or falsified, any book, paper or writing relating to such of his affairs as are subject to investigation under this Act, or

(b) fraudulently with intent to diminish the sum to be divided amongst his creditors or of giving an undue preference to any of the said creditors,—

(i) has discharged or concealed any debt due to or from him, or

(ii) has made away with, charged, mortgaged or concealed any part of his property of what kind soever,

shall on conviction be punishable with imprisonment for a term which may extend to two years.

of 1909.]

(Part VIII.—Penalties.—Secs. 103A—105.)

¹[103A. (1) Where a debtor is adjudged or readjudged insolvent under this Act, he shall, subject to the provisions of this section, be disqualified from— **Disqualifications of insolvent.**

- (a) being appointed or acting as a Magistrate;
- (b) being elected to any office of any local authority where the appointment to such office is by election, or holding or exercising any such office to which no salary is attached; and
- (c) being elected or sitting or voting as a member of any local authority.

(2) The disqualifications which an insolvent is subject to under this section shall be removed, and shall cease if—

- (a) the order of adjudication is annulled under sub-section (1) of section 21, or
- (b) he obtains from the Court an order of discharge, whether absolute or conditional, with a certificate that his insolvency was caused by misfortune without any misconduct on his part.

(3) The Court may grant or refuse such certificate as it thinks fit.]

²[104. (1) Where the Court is satisfied, after such preliminary inquiry, if any, as it thinks necessary, that there is ground for inquiring into any offence referred to in section 103 and appearing to have been committed by the insolvent, the Court may record a finding to that effect and make a complaint of the offence in writing to a Presidency Magistrate or a Magistrate of the first class having jurisdiction, and such Magistrate shall deal with such complaint in the manner laid down in the Code of Criminal Procedure, 1898. **Procedure on charge under section 103.**

Act V of 1898.

(2) Any complaint made by the Court under sub-section (1) may be signed by such officer of the Court as the Court may appoint in this behalf.]

105. Where an insolvent has been guilty of any of the offences specified in section 102 or section 103, he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge or that a composition or scheme of arrangement has been accepted or approved. **Criminal liability after discharge or composition.**

¹Inserted by sec. 2 of the Presidency-towns Insolvency (Amendment) Act, 1920 (XI of 1920).

²Substituted by sec. 9 of the Insolvency (Amendment) Act, 1926 (IX of 1926).

[Act III]

(Part IX.—*Small Insolvencies*.—Sec. 106—Part X.—*Special Provisions*.—Secs. 107, 108.)

PART IX**SMALL INSOLVENCIES**

Summary
adminis-
tration in
small cases.

106. (1) Where the Court is satisfied by affidavit or otherwise, or the official assignee reports to the Court, that the property of an insolvent is not likely to exceed in value three thousand rupees or such other less amount as may be prescribed, the Court may make an order that the insolvent's estate be administered in a summary manner, and thereupon the provisions of this Act shall be subject to the following modifications, namely:—

- (a) no appeal shall lie from any order of the Court, except by leave of the Court;
- (b) no examination of the insolvent shall be held except on the application of a creditor or the official assignee;
- (c) the estate shall, where practicable, be distributed in a single dividend;
- (d) such other modifications as may be prescribed with the view of saving expense and simplifying procedure:

Provided that nothing in this section shall permit the modification of the provisions of this Act relating to the discharge of the insolvent.

(2) The Court may at any time, if it thinks fit, revoke an order for the summary administration of an insolvent's estate.

PART X**SPECIAL PROVISIONS**

Exemp-
tion of
corporation.
etc., from
insolvency
proceedings.

107. No insolvency petition shall be presented against any corporation or against any association or company registered under any enactment for the time being in force.

Administra-
tion in in-
solventy of
estate of
person
dying in-
solvent.

108. (1) Any creditor of a deceased debtor whose debt would have been sufficient to support an insolvency petition against the debtor, had he been alive, may present to the Court within the limits of whose ordinary original civil jurisdiction the debtor resided or carried on business for the greater part of the six months immediately prior to his decease, a petition in the prescribed form praying for an order for the administration of the estate of the deceased debtor under this Act.

(Part X.—*Special Provisions.*—Secs. 109, 110.)

(2) Upon the prescribed notice being given to the legal representative of the deceased debtor, the Court may, upon proof of the petitioner's debt, unless the Court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased, make an order for the administration in insolvency of the deceased debtor's estate, or may upon cause shown dismiss the petition with or without costs.

(3) A petition for administration under this section shall not be presented to the Court after proceedings have been commenced in any Court of Justice for the administration of the deceased debtor's estate; but that Court may in that case, on proof that the estate is insufficient to pay its debts, transfer the proceedings to the Court exercising jurisdiction in insolvency under this Act, and thereupon the last-mentioned Court may make an order for the administration of the estate of the deceased debtor, and the like consequences shall ensue as under an administration order made on the petition of a creditor.

109. (1) Upon an order being made for the administration of a deceased debtor's estate under section 108, the property of the debtor shall vest in the official assignee of the Court, and he shall forthwith proceed to realize and distribute the same in accordance with the provisions of this Act. Vesting of estate and mode of administration.

(2) With the modification hereinafter mentioned, all the provisions of Part III, relating to the administration of the property of an insolvent, shall, so far as the same are applicable, apply to the case of such administration order in like manner as to an order of adjudication under this Act.

(3) In the administration of the property of the deceased debtor under an order of administration, the official assignee shall have regard to any claims by the legal representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor's estate; and those claims shall be deemed a preferential debt under the order, and be payable in full, out of the debtor's estate, in priority to all other debts.

(4) If, on the administration of the deceased debtor's estate, any surplus remains in the hands of the official assignee after payment in full of all the debts due from the debtor, together with the costs of the administration and interest as provided by this Act in case of insolvency, such surplus shall be paid over to the legal representative of the deceased debtor's estate, or dealt with in such other manner as may be prescribed.

110. (1) After notice of the presentation of a petition under section 108 no payment or transfer of property made by the legal representative shall operate as a discharge to him as between himself and the official assignee. Payments or transfer by legal representatives.

(Part X.—Special Provisions.—⁵Sec. III.—Part XI.—Rules.—
Sec. 112.)

(2) Save as aforesaid nothing in section 108 or section 109 or this section shall invalidate any payment made or act or thing done in good faith by the legal representative or by a District Judge acting under the powers conferred on him by section 64 of the Administrator-General's Act, 1874, before the date of the order for administration. II of 1874.

Saving of jurisdiction of Administrator-General. 111. The provisions of sections 108, 109 and 110 shall not apply to any case in which probate or letters of administration to the estate of a deceased debtor have been granted to an Administrator-General.

PART XI

RULES

Rules.

112. (1) The Courts having jurisdiction under this Act may from time to time make rules ¹[except in regard to those matters to which section 112A applies.]

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for and regulate—

(a) the fees and percentages ²[other than fees and percentages chargeable by the official assignee] to be charged under this Act and the manner in which the same are to be collected and accounted for and the account to which they are to be paid;

3* * * * *

(c) the proceedings of the official assignee in taking possession of and realizing the estates of insolvent debtors;

[Clause (d) was omitted by para. 2 and the Sch. of the Govt. of India (Adaptation of Indian Laws) Supplementary Order, 1937].

¹Inserted by sec. 8 (a) of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936 (Ben. Act XVIII of 1936).

²Inserted by sec. 8 (b) (i), *ibid*.

³Clauses (b) (d), (e), (f), (g), (h), (i) and (s) were omitted by sec. 8(b) (ii), *ibid*.

The clauses which were omitted are as follows, namely:—

“(b) the investment, whether separately or collectively, of unclaimed dividends, balances and other sums appertaining to the estates of insolvent debtors, whether adjudicated insolvent under this or any former enactment; and the application of the proceeds of such investment;

(e) the receipts, payments and accounts of the official assignee;

(f) the audit of the accounts of the official assignee;

(g) the payment of the costs of the audit of his accounts out of the proceeds of the investments in his hands;

(h) the payment of the costs incurred in the prosecution of fraudulent debtors and in legal proceedings taken by the official assignee under the direction of the Court out of the proceeds aforesaid;

(i) the payment of any civil liability incurred by an official assignee acting under the order or direction of the Court;

(s) the distribution of work between the official assignee and his deputy or deputies;”

(Part XI.—Rules.—Sec. 112A.)

- * * * * *
- (j) the proceedings to be taken in connection with proposals for composition and schemes of arrangement with the creditors of insolvent debtors;
 - (k) the intervention of the official assignee at the hearing of applications and matters relating to insolvent debtors and their estates;
 - ²[(kk) filing of lists of creditors and debtors and the affording of assistance to the Court by a petitioning debtor;]
 - (l) the examination by the official assignee of the books and papers of account of undischarged insolvent debtors;
 - (m) the service of notices in proceedings under this Act;
 - (n) the appointment, meetings and procedure of committees of inspection;
 - (o) the conduct of proceedings under this Act in the name of a firm;
 - (p) the forms to be used in proceedings under this Act;
 - (q) the procedure to be followed in the case of estates to be administered in a summary manner;
 - (r) the procedure to be followed in the case of estates of deceased persons to be administered under this Act;

* * * * *

³[and, in the case of the High Court at Madras, may also provide for and regulate the remuneration of the official assignee and the payment of the costs, charges and expenses of his establishment.]

⁴112A. (1) The “[State Government] may make rules for carrying into effect the objects of this Act in regard to those functions of the official assignee which are discharged under the administrative control of the “[State Government].

Power of State Government to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for and regulate—

- (a) the fees and percentages to be charged by the official assignee for and in respect of proceedings under this Act and the manner in which the same are to be collected and accounted for;

¹See foot-note 3 on page 910, *ante*.

²Inserted by sec. 5 of the Presidency-towns Insolvency (Amendment) Act, 1927 (XIX of 1927).

³Inserted by para. 2 and the Sch. of the Govt. of India (Adaptation of Indian Laws) Supplementary Order, 1937.

⁴Sec. 112A was inserted by sec. 9 of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936 (Ben. Act XVIII of 1936).

⁵See foot-note 1 on page 897, *ante*.

(Part XI.—Rules.—Secs. 113, 114.)

- (b) the receipts, payments and accounts of the official assignee;
- (c) the audit of the accounts of the official assignee;
- (d) the security to be given by the official assignee and his deputy or deputies;
- (e) the distribution of work between the official assignee and his deputy or deputies;
- (f) the conditions of service of the officers and servants of the official assignee;
- (g) the payment by the ¹[State Government] of sums under sub-section (2) of section 82, or under section 82A or section 82B;
- (h) the repayment by the official assignee of sums under section 82C;
- (i) the maintenance of an account by the official assignee under sub-section (1) of section 84A and the payments to be made into such account;
- (j) the investment of sums by the official assignee under sub-section (2) of section 84A and the realization of such investments;
- (k) the transfer and payment by the official assignee of the proceeds of investments to the authority referred to in sub-section (4) of section 84A, and
- (l) the transfer and payment by the official assignee of fees and percentages, and of commission or other remuneration, to the authority referred to in section 125.

(3) Rules made under this section shall be published in the ²[Official Gazette] and shall thereupon have the same force and effect as if they had been enacted in this Act.

Sanction to rules. ³[113. Rules made under the provisions ⁴[of section 112] shall be subject to the previous sanction of the ⁵[State Government.]

Publication of rules. 114. Rules so made and sanctioned shall be published ⁶**** in the ⁷[Official Gazette], ⁸**** and shall thereupon have the same force and effect with regard to proceedings under this Act in the Court which made them as if they had been enacted in this Act.

¹See foot-note 1 on page 897, *ante*.

²Substituted for the words "local official Gazette" by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³Substituted for the former sec. by para. 3 and the First Schedule, *ibid*.

⁴Substituted for the words "of this Part" by sec. 10 of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936 (*Ben. Act XVIII of 1936*).

⁵The words "in the Gazette of India" were omitted by para. 3 and the First Schedule of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁶The words "as the case may be" were omitted, *ibid*.

[of 1909.]

(Part XII.—Supplemental.—Secs. 115—117.)

PART XII

SUPPLEMENTAL

115. (1) Every transfer, mortgage, assignment, power-of-attorney, proxy paper, certificate, affidavit, bond or other proceedings, instrument or writing whatsoever before or under any order of the Court, and any copy thereof, shall be exempt from payment of any stamp or other duty whatsoever. Exemption from duty of transfers, etc., under this Act.

(2) No Stamp-duty or fee shall be chargeable for any application made by the official assignee to the Court under this Act, or for the drawing and issuing of any order made by the Court on such application.

116. (1) A copy of the Official Gazette containing any notice inserted in pursuance of this Act shall be evidence of the facts stated in the notice. The Gazette to be evidence.

(2) A copy of the Official Gazette containing any notice of an order of adjudication shall be conclusive evidence of the order having been duly made, and of its date.

117. Any affidavit may be used in a Court having jurisdiction under this Act if it is sworn— Swearing of affidavits.

(a) in [the States], before—

(i) any Court or Magistrate, or

V of 1908

(ii) any officer or other person appointed to administer oaths under the Code of Civil Procedure, 1908;

(b) in England, before any person authorized to administer oaths in His Majesty's High Court of Justice, or in the Court of Chancery of the County Palatine of Lancaster, or before any Registrar of a Bankruptcy Court, or before any officer of a Bankruptcy Court authorized in writing in that behalf by the Judge of the Court or before a Justice of the Peace for the county or place where it is sworn;

(c) in Scotland or in Ireland, before a Judge Ordinary, Magistrate or Justice of the Peace; and

(d) in any other place, before a Magistrate or Justice of the Peace or other person qualified to administer oaths in that place (he being certified to be a Magistrate or Justice of the Peace, or qualified as aforesaid, by [an Indian Consul or Political Agent] or by a notary public).

¹The words "the Provinces of India" were first substituted for the words "British India" by para. 3 (1) and the Schedule of the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948. Thereafter the word "States" was substituted for the word "Provinces" by para. 4(1) of the Adaptation of Laws Order, 1950, and the words "of India" were omitted by para. 3 and the First Schedule of that Order.

²Substituted for the words "a British Minister or British Consul or Political Agent" by para. 3 and the First Schedule of the Adaptation of Laws Order, 1950.

(Part XII.—Supplemental.—Secs. 118—123.)

Formal defect not to invalidate proceedings. 118. (1) No proceeding in insolvency shall be invalidated by any formal defect or by any irregularity, unless the Court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of that Court.

(2) No defect or irregularity in the appointment of an official assignee or member of a committee of inspection shall vitiate any act done by him in good faith.

Application of Trustee Act to insolvency of trustee. 119. Where an insolvent is a trustee within the Indian Trustee Act, 1866, section 35 of that Act shall have effect so as to authorize the appointment of a new trustee in substitution for the insolvent (whether voluntarily resigning or not), if it appears expedient to do so, and all provisions of that Act, and of any other Act relative thereto, shall have effect accordingly.

XXVII
of 1866

Certain provisions to bind the Government. 120. Save as herein provided, the provisions of this Act relating to the remedies against the property of a debtor, the priorities of debts, the effect of a composition or scheme of arrangement, and the effect of a discharge shall bind the [Government].

Savings for existing rights of audience. 121. Nothing in this Act, or in any transfer of jurisdiction effected thereby, shall take away or affect any right of audience that any person may have had immediately before the commencement of this Act, or shall be deemed to confer such right in insolvency matters on any person who had not a right of audience before the Courts for the Relief of Insolvent Debtors.

Lapse and credit to Government of unclaimed dividends. 122. Where the official assignee has under his control any dividend which has remained unclaimed for fifteen years from the date of declaration or such less period as may be prescribed, he shall pay the same to the account and credit of [the State Government], unless the Court otherwise directs.

Claims to monies credited to Government under section 122. 123. Any person claiming to be entitled to any monies paid to the account and credit of [the State Government] under section 122, may apply to the Court for an order for payment to him of the same; and the Court, if satisfied that the person claiming is entitled, shall make an order for payment to him of the sum due:

Provided that, before making an order for the payment of a sum which has been carried to the account and credit of [the State Government], the Court shall cause a notice to be

¹Substituted for the word "Crown" by para. 4(1) of the Adaptation of Laws Order, 1950.

²The words "the Provincial Government" were first substituted for the words "the Government of India" by para. 3 and the First Schedule of the Government of India (Adaptation of Indian Laws) Order, 1937. Thereafter, the word "State" was substituted for the word "Provincial" by para. 4 (1) of the Adaptation of Laws Order, 1950.

(Part XII.—Supplemental.—Secs. 124—127.)

served on such officer as [the State Government] may appoint in this behalf, calling on the officer to show cause, within one month from the date of the service of the notice, why the order should not be made.

124. (1) No person shall, as against the official assignee, be entitled to withhold possession of the books of accounts belonging to the insolvent or to set up any lien thereon. Access to insolvent's books.

(2) Any creditor of the insolvent may, subject to the control of the Court, and on payment of such fee, if any, as may be prescribed, inspect at all reasonable times, personally or by agent, any such books in the possession of the official assignee.

125. ²[(1)] Such fees and percentages shall be charged for and in respect of proceedings under this Act as may be prescribed. Fees and percentages

²(2) The official assignee shall transfer and pay to such authority and in such manner and at such times as may be prescribed in this behalf all fees and percentages received by him after the commencement of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936, and the same shall be carried to the account and credit of the [State Government]. Ben. Act XVIII of 1936.

²(3) Any percentages or commission or other remuneration received by the official assignee if appointed as a trustee in a composition or as agent of another official assignee shall be similarly so transferred and paid by him.

46 and 47
Vict., c. 52.
III of 1907. 126. All Courts having jurisdiction under this Act shall make such orders and do such things as may be necessary to give effect to section 118 of the Bankruptcy Act, 1883, and to section 50 of the Provincial Insolvency Act, 1907; Courts to be auxiliary to each other.

127. * * * * *

11 and 12
Vict., c. 21. (2) * * * The proceedings under an insolvency petition under the Indian Insolvency Act, 1848, pending at the commencement of this Act shall, except so far as any provision of this Act is expressly applied to pending proceedings, continue, and all the provisions of the said Indian Insolvency Act shall, except as aforesaid, apply thereto, as if this Act had not been passed. Saving.

¹The words "the Provincial Government" were substituted for the words "the Governor-General of India" by para. 3 and the First Schedule of the Government of India (Adaptation of Indian Laws Order, 1937. Thereafter, the word "State" was substituted for the word "Provincial" by para. 4 (1) of the Adaptation of Laws Order, 1950.

²Sec. 125 was re-numbered as sub-section (1) of that section and after that section, as so re-numbered, sub-sections (2) and (3) were added by sec. 11 of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936 (Ben. Act XVIII of 1936).

³See foot-note 2 on page 897, ante.

⁴See now the Provincial Insolvency Act, 1920 (V of 1920).

⁵Sub-section (1) and the words "Notwithstanding the repeal effected by this Act," in sub-section (2) were repealed by sec. 3 and Sch. II of the Repealing and Amending Act, 1914 (X of 1914).

[Act III]*(The First Schedule.—Meetings of Creditors.—rules 1—8.)***THE FIRST SCHEDULE**

(See section 26)

MEETINGS OF CREDITORS

- Meetings of creditors.** 1. The official assignee may at any time summon a meeting of creditors, and shall do so whenever so directed by the Court or by the creditors by resolution at any meeting or whenever requested in writing by one-fourth in value of the creditors who have proved.
- Summoning meetings.** 2. Meetings shall be summoned by sending notice of the time and place thereof to each creditor at the address given in his proof, or, if he has not proved, at the address given in the insolvent's schedule, or such other address as may be known to the official assignee.
- Notice of meetings.** 3. The notice of any meeting shall be sent off not less than seven days before the day appointed for the meeting and may be delivered personally or sent by prepaid post letter, as may be convenient. The official assignee may, if he thinks fit, also publish the time and place of any meeting in any local newspaper or in the '[Official Gazette].
- Duty of insolvent to attend if required.** 4. It shall be the duty of the insolvent to attend any meeting to which the official assignee may, by notice, require him to attend, and any adjournment thereof. Such notice shall be either delivered to him personally or sent to him at his address by post at least three days before the date fixed for the meeting.
- Proceedings not to be avoided for non-receipt of notice.** 5. The proceedings held and resolutions passed at any meeting shall, unless the Court otherwise orders, be valid notwithstanding that any creditor has not received the notice sent to him.
- Proof of issue of notice.** 6. A certificate of the official assignee that the notice of any meeting has been duly given shall be sufficient evidence of such notice having been duly sent to the person to whom the same was addressed.
- Costs of meeting.** 7. Where on the request of creditors the official assignee summons a meeting, there shall be deposited with the written request the sum of five rupees for every twenty creditors for the costs of summoning the meeting, including all disbursements: Provided that the official assignee may require such further sum to be deposited as in his opinion shall be sufficient to cover the costs and expenses of the meeting.
- Chairman.** 8. The official assignee shall be the chairman of any meeting.

¹Substituted for the words "local official Gazette" by para. 4 (1) of the Adaptation of Laws Order, 1950.

of 1909.]

(The First Schedule.—Meetings of Creditors.—rules 9—17.)

9. A creditor shall not be entitled to vote at a meeting unless he has duly proved a debt provable in insolvency to be due to him from the insolvent, and the proof has been duly lodged one clear day before the time appointed for the meeting.

Right to vote.

10. A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.

No vote in respect of certain debts.

11. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance, if any, due to him after deducting the value of his security. If he votes in respect of his whole debt, he shall be deemed to have surrendered his security, unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence.

Secured creditor.

12. Where a creditor seeks to prove in respect of a bill of exchange, promissory note, or other negotiable instrument or security on which the insolvent is liable, such bill of exchange, note, instrument or security must, subject to any special order of the Court made to the contrary, be produced to the official assignee before the proof can be admitted for voting.

Proof in respect of negotiable instruments.

13. It shall be competent to the official assignee, within twenty-eight days after a proof estimating the value of a security has been made use of in voting at any meeting, to require the creditor to give up the security for the benefit of the creditors generally, on payment of the value so estimated.

Power to require creditor to give up security.

14. If one partner in a firm is adjudged insolvent, any creditor to whom that partner is indebted jointly with the other partners in the firm, or any of them, may prove his debt for the purpose of voting at any meeting of creditors and shall be entitled to vote thereat.

Proof by partner.

15. The official assignee shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether the proof of a creditor should be admitted or rejected, he shall mark the proof as objected to, and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

Power of official assignee to admit or reject proof.

16. A creditor may vote either in person or by proxy.

Proxy.

17. Every instrument of proxy shall be in the prescribed form and shall be issued by the official assignee.

Instrument of proxy.

[Act III]

(The First Schedule.—Meetings of Creditors.—rules 18—22.—
The Second Schedule.—Proof of Debts.—rules 1—6.)

General
proxy.

18. A creditor may give a general proxy to his attorney or to his manager or clerk, or any other person in his regular employment. In such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor.

Proxy to be
deposited
one day
before date
of meeting.

19. A proxy shall not be used unless it is deposited with the official assignee one clear day before the time appointed for the meeting at which it is to be used.

Official as-
signee as
proxy.

20. A creditor may appoint the official assignee to act as his proxy.

Adjourn-
ment of
meeting.

21. The official assignee may adjourn the meeting from time to time and from place to place, and no notice of the adjournment shall be necessary.

Minute of
proceedings.

22. The official assignee shall draw up a minute of the proceedings at the meeting and shall sign the same.

THE SECOND SCHEDULE

(See section 48)

PROOF OF DEBTS

Proofs in ordinary cases

Time for
lodging
proof.

1. Every creditor shall lodge the proof of his debt as soon as may be after the making of an order of adjudication.

Mode of
lodging
proof.

2. A proof may be lodged by delivering or sending by post in a registered letter to the official assignee an affidavit verifying the debt.

Authority
to make
affidavit.

3. The affidavit may be made by the creditor himself or by some person authorized by or on behalf of the creditor. If made by a person so authorized, it shall state his authority and means of knowledge.

Contents of
affidavit.

4. The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The official assignee may at any time call for the production of the vouchers.

Affidavit to
state if cre-
ditor holds
security.

5. The affidavit shall state whether the creditor is or is not a secured creditor.

Cost of pro-
ving debts.

6. A creditor shall bear the cost of proving his debt unless the Court otherwise specially orders.

of 1909.]

(The Second Schedule.—Proof of debts.—rules 7—13.)

7. Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors at all reasonable times. **Right to see and examine proof.**

8. A creditor in lodging his proofs shall deduct from his debt all trade discounts, but he shall not be compelled to deduct any discount, not exceeding five *per centum* on the net amount of his claim, which he may have agreed to allow for payment in cash. **Deduction to be made from proof.**

Proof by secured creditors

9. If a secured creditor realizes his security, he may prove for the balance due to him, after deducting the net amount realized. **Proof where security realized.**

10. If a secured creditor surrenders his security to the official assignee for the general benefit of the creditors, he may prove for his whole debt. **Proof where security is surrendered.**

11. If a secured creditor does not either realize or surrender his security, he shall, before ranking for dividend, state in his proof the particulars of his security, the date when it was given and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed. **Proof in other cases.**

12. (1) Where a security is so valued the official assignee may at any time redeem it on payment to the creditor of the assessed value. **Valuation of security.**

(2) If the official assignee is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be agreed on between the creditor and the official assignee, or as, in default of agreement, the Court may direct. If the sale is by public auction, the creditor, or the official assignee on behalf of the estate, may bid or purchase:

Provided that the creditor may at any time, by notice in writing, require the official assignee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realized, and if the official assignee does not, within six months after receiving the notice, signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it; and the equity of redemption, or any other interest in the property comprised in the security which is vested in the official assignee, shall vest in the creditor, and the amount of his debt shall be reduced by the amount at which the security has been valued.

13. Where a creditor has so valued his security, he may at any time amend the valuation and proof on showing to the satisfaction of the official assignee, or the Court, that the valuation and proof were made *bona fide* on a mistaken estimate, or that **Amendment of valuation.**

(The Second Schedule.—Proof of Debts.—rules 14—18.)

the security has diminished or increased in value since its previous valuation; but every such amendment shall be made at the cost of the creditor, and upon such terms as the Court shall order, unless the official assignee shall allow the amendment without application to the Court.

Refund of
excess re-
ceived.

14. Where a valuation has been amended in accordance with the foregoing rule, the creditor shall forthwith repay any surplus dividend which he has received in excess of that to which he would have been entitled on the amended valuation, or, as the case may be, shall be entitled to be paid out of any money for the time being available for dividend, any dividend or share of dividend which he has failed to receive by reason of the inaccuracy of the original valuation, before that money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment.

Amend-
ment where
security
subsequ-
ently rea-
lized.

15. If a creditor after having valued his security subsequently realizes it, or if it is realized under the provisions of rule 12, the net amount realized shall be substituted for the amount of any valuation previously made by the creditor and shall be treated in all respects as an amended valuation made by the creditor.

Exclusion
from shar-
ing in divi-
dend.

16. If a secured creditor does not comply with the foregoing rules, he shall be excluded from all share in any dividend.

Limit of re-
ceipt.

17. Subject to the provisions of rule 12, a creditor shall in no case receive more than sixteen annas in the rupee and interest as provided by this Act.

Taking accounts of property mortgaged, and of the sale thereof

Inquiry in-
to mort-
gage, etc.

18. Upon application by any person claiming to be a mortgagee of any part of the insolvent's real or leasehold estate and whether such mortgage is by deed or otherwise, and whether the same is of a legal or equitable nature, or upon application by the official assignee with the consent of such person claiming to be a mortgagee as aforesaid, the Court shall proceed to inquire whether such person is such mortgagee, and for what consideration and under what circumstances; and if it is found that such person is such mortgagee, and if no sufficient objection appears to the title of such person to the sum claimed by him under such mortgage, the Court shall direct such accounts and inquiries to be taken as may be necessary for ascertaining the principal, interest and costs due upon such mortgage, and of the rents and profits, or dividends, interest or other proceeds received by such person, or by any other person by his order or for his use in case he has been in possession of the property over which the mortgage extends, or any part thereof, and the Court, if satisfied that

(The Second Schedule.—Proof of Debts.—rules 19—23.)

there ought to be a sale, shall direct notice to be given in such newspapers as the Court thinks fit, when and where, and by whom and in what way, the said premises or property, or the interest therein so mortgaged, are to be sold, and that such sale be made accordingly, and that the official assignee¹ [(unless it is otherwise ordered for reasons to be recorded in writing)] shall have the conduct of such sale; but it shall not be imperative on any such mortgagee to make such application. At any such sale the mortgagee may bid and purchase.

19. All proper parties shall join in the conveyance to the purchaser, as the Court directs.

Conveyance.

20. The monies to arise from such sale shall be applied, in the first place, in payment of the costs, charges and expenses of and occasioned by the application to the Court, and of such sale and the commission (if any) of the official assignee, and in the next place in payment and satisfaction, so far as the same extend, of what shall be found due to such mortgagee, for principal, interest and costs, and the surplus of the sale monies (if any) shall then be paid to the official assignee. But if the monies to arise from such sale are insufficient to pay and satisfy what is so found due to such mortgagee, then he shall be entitled to prove as a creditor for such deficiency, and receive dividends thereon rateably with the other creditors, but so as not to disturb any dividend then already declared.

Proceeds of sale.

21. For the better taking of such inquiries and accounts, and making a title to the purchaser, all parties may be examined by the Court upon interrogatories or otherwise as the Court thinks fit, and shall produce before the Court upon oath all deeds, papers, books and writings in their respective custody or power relating to the estate or effects of the insolvent as the Court directs.

Proceedings on inquiry.

Periodical Payments

22. When any rent or other payment falls due at stated periods, and the order of adjudication is made at any time other than one of those periods, the person entitled to the rent or payment may prove for a proportionate part thereof up to the date of the order as if the rent or payment due grew from day to day.

Periodical payments.

Interest

23. (1) On any debt or sum certain whereon interest is not reserved or agreed for, and which is overdue when the debtor is adjudged an insolvent, and which is provable under this Act, the creditor may prove for interest at a rate not exceeding six *per centum per annum*—

Interest.

(a) if the debt or sum is payable by virtue of a written instrument at a certain time, from the time when such debt or sum was payable to the date of such adjudication; or

¹Substituted for the words and brackets "(unless it is otherwise ordered)" by sec. 12 of the Presidency-towns Insolvency (Bengal Amendment) Act, 1936 (Ben. Act XVIII of 1936).

[Act III]

(*The Second Schedule.—Proof of Debts.—rules 24—27.—
The Third Schedule.*)

(b) if the debt or sum is payable otherwise, from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment to the date of such adjudication.

(2) Where a debt which has been proved in insolvency includes interest or any pecuniary consideration in lieu of interest, the interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding six *per centum per annum*, without prejudice to the right of a creditor to receive out of the debtor's estate any higher rate of interest to which he may be entitled after all the debts proved have been paid in full.

Debt payable at a future time

Debt payable in the future. 24. A creditor may prove for a debt and payable when the debtor is adjudged an insolvent as if it were payable presently, and may receive dividends equally with the other creditors, deducting therefrom only a rebate of interest at the rate of six *per centum per annum*, computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted.

Admission or rejection of proofs

Admission or rejection of proof. 25. The official assignee shall examine every proof and the grounds of the debt, and in writing admit or reject it in whole or in part, or require further evidence in support of it. If he rejects a proof, he shall state in writing to the creditor the grounds of the rejection.

Court may expunge proof improperly received. 26. If the official assignee thinks that a proof has been improperly admitted the Court may, on the application of the official assignee, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

Power for Court to expunge or reduce proof. 27. The Court may also expunge or reduce a proof upon the application of a creditor if the official assignee declines to interfere in the matter, or in the case of a composition or scheme upon the application of the insolvent.

THE THIRD SCHEDULE.—[*Enactments repealed.*]*—Rep. by sec. 3 and Sch. II of the Repealing and Amending Act, 1914 (10 of 1914.)*

Act XV of 1919.
**(The Calcutta High Court (Jurisdictional Limits)
 Act, 1919.)¹**

[17th September, 1919.]

An Act to declare and prescribe the limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal.

WHEREAS clause 11 of the Letters Patent for the High Court of Judicature at Fort William in Bengal, dated the 28th December, 1865, provides that the said High Court shall have and exercise ordinary original civil jurisdiction within such local limits as may from time to time be declared and prescribed by any law made by competent legislative authority for India;

AND WHEREAS it is expedient so to declare and prescribe the local limits of the ordinary original civil jurisdiction of the said High Court;

It is hereby enacted as follows:—

1. This Act may be called the Calcutta High Court (Jurisdictional Limits) Act, 1919. Short title.

2. The ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal shall be exercised within the limits set out in the schedule: Limits of ordinary original civil jurisdiction.

Provided that nothing in this Act shall affect any suit or other legal proceeding pending in any Court at the date of the commencement of this Act.

THE SCHEDULE.

(See section 2.)

1. The limits within which the ordinary original civil jurisdiction of the High Court shall be exercised are as follows:—

North.—A line commencing on the western side of the river Hooghly at a point where the straight line joining reference pillar No. I (in a compound on the river side of the Ghusr Cotton Mill, Howrah) and reference pillar No. II (near the south-western end of Chitpur Toll Bridge) meets the western water-line of the river Hooghly, and thence along the said line to the point where it meets the eastern water-line of the river Hooghly near the south bank of the opening of Circular Canal; thence along the water-line of the south bank of Circular Canal passing under the Chitpur Toll Bridge, the Chitpur or Bagh-bazar Bridge to boundary pillar A on the eastern side of the southern pile of Barrackpore Bridge.

East.—A line commencing from the said boundary pillar A following the eastern edge of the steps of the bridge to a point near the south-eastern corner of the immediate approach to the

¹LEGISLATIVE PAPERS.—For the Statement of Objects and Reasons, see the Gazette of India. Pt. V, page 74, and for Proceedings in Council, see, *ibid*, 1919, Pt. VI, pages 876 and 877 and pages 1101 and 1102.

(*The Schedule.*)

bridge marked by reference pillar III, which is on the boundary; thence by a straight line to boundary pillar B on the south-eastern corner of the junction of Cornwallis Street and Galif Street (now marked with a Public Works Department stone); thence along the eastern side and the eastern side of the eastern pavement of Cornwallis Street in a series of regular links joining points marked by posts 1-3 to boundary pillar C at the north corner of the junction of Shambazar Street with Cornwallis Street; thence by a straight line to boundary pillar D on the solid south corner of the said junction; thence in an approximately straight line along the solid eastern side of Upper Circular Road marked by posts 4-9; thence eastward following the corner round to boundary pillar E on the north corner of the junction of the unnamed road (which runs into Jadu Nath Mitra Lane) with Upper Circular Road; and thence by a straight line to boundary pillar F at the solid south corner of the junction of Jadu Nath Mitra Lane with Upper Circular Road; thence by posts 10-13 to boundary pillar G on the solid south corner of the junction of Ultadingi Road with Upper Circular Road; thence along the solid south side of Ultadingi Road in a series of continuous and approximately straight lines joining points marked by posts 14-16 to boundary pillar H at the solid western corner of the junction of Ultadingi Road and Gauribere Lane; thence by the solid western side of Gauribere Lane marked by posts 17-21; thence by a straight line crossing the road diagonally to boundary pillar I on the solid south-eastern corner of the junction of Gouribere Lane and Ultadingi Junction Lane; thence along the solid eastern side of Ultadingi Junction Lane marked by posts 22-24 to boundary pillar J on the solid eastern corner of the junction of Ultadingi Junction Lane with Halsibagan Road; thence by a straight line to post 25 at the solid western corner of the said junction; thence along the solid north side of Halsibagan Road marked by post 26 to boundary pillar K on the north side of Halsibagan Road directly opposite the solid eastern side of Upper Circular Road south of it; thence by a straight line to post 27 at the solid south corner of the junction of Halsibagan Road with Upper Circular Road; thence by the solid eastern side of Upper Circular Road marked by posts 28-34 to post 35; thence turning east to boundary pillar L on the north side of Maniktola Road; thence by a straight line to post 36 at the south corner of the junction of Maniktola Road with Upper Circular Road at the north-western corner of the garden of Kali Pada Barik; thence along the eastern side of the lane on the eastern side of the raised platform road and marked by posts 37-49 to boundary pillar M at the solid north corner of the junction of Gas Street and Upper Circular Road; thence by a straight line to boundary pillar N at the solid south corner of the said junction; thence keeping again to the eastern side of the lane on the eastern side of the raised platform road along a line marked by posts 50-61 excluding the recently made Ladies' Park to boundary pillar O near the north pillar of the north entrance to North Station, Sealdah; thence by a straight line to boundary pillar P at the south corner of that entrance;

of 1919.]

(The Schedule.)

thence by the comparatively straight lines from pillar to pillar connecting boundary pillars P, Q, R, S and T adjacent to the pillars forming the corners of the various approaches to Sealdah Station; thence along the solid eastern side of Lower Circular Road marked by posts 62-64 to pillar 65; thence turning west to boundary pillar U at the north-western corner of the outpatients' department of the 'Campbell Hospital; thence by a straight line marked by posts 66-68 to boundary pillar V on the corner of the platform to the right of the north entrance to the Calcutta Corporation Central Stores; thence by post 69 turning east to post 70; thence by posts 71-76, boundary pillars W and X at the solid corners of the southern junction of Police Hospital Road with Lower Circular Road; thence by posts 77-80 to boundary pillars Y and Z on the solid corners of the junction of Beniapukur Lane with Lower Circular Road, by posts 81-86 to boundary pillars A₁ and B₁, at the solid corners of the junction of Nonapukur or Bijli Road and Lower Circular Road, posts 87,88, to boundary pillar C₁, near the south-western corner of the Circular Road burial ground; thence by a straight line to boundary pillar D₁, on the other side of the tramway lines; thence post 89 eastward to post 90; thence to boundary pillars, E₁ and F₁ at the solid corners of the junction of Karaya Bazar Road and Lower Circular Road, posts 91, 92 to boundary pillar G₁, opposite to Theatre Road, posts 93, 94, to boundary pillar H₁, a few feet south of the point directly opposite, the junction of Auckland Place and Lower Circular Road, and following the curve of the road by posts 95 and 96 to reference pillar IV (which is on the boundary) on the eastern side of the junction of Beck Bagan Lane with Lower Circular Road.

South—A line commencing from the said reference pillar IV in a straight line to boundary pillar I₁, on the western corner of the junction of Beck Bagan Lane with Lower Circular Road; thence along the solid south side of Lower Circular Road to boundary pillar J₁, and K₁, at the solid corners of the junction of Ballyganj Circular Road and Lower Circular Road; thence by the solid south side of Lower Circular Road marked by posts 97, 98, boundary pillars, L₁, M₁ at the solid corners of the junction of Lansdowne Road with Lower Circular Road, post 99 southward to post 100 westward to post 101, northward to post 102 and westward to post 103, boundary pillars N₁ and O₁ at the solid corners of the junction of Woodburn Road with Lower Circular Road, posts 104, 105, boundary pillars P₁ and Q₁ at the solid corners of the junction of Lee Road with Lower Circular Road; thence by the straight line links but broken boundary line formed by posts 106-113 to boundary pillar R₁, on the southeastern corner of the junction of Chowringhee with Lower Circular Road; thence by an oblique straight line to boundary pillar S₁ on the south-western corner

¹Now known as Nilratan Sarcar Medical College.

[Act XV

(*The Schedule.*)

of the said junction (near a stone marked F. W. B.-26); thence by a line representing the present limits of the holdings on the south of Circular Road and marked by posts 114-116, boundary pillars T_1 , and U_1 at the solid corners of the junction of Haris Chandra Mukherji Road and Lower Circular Road, posts 117-121; thence to boundary pillar V_1 , near the north corner of the junction of Bhowanipore Road and Lower Circular Road; thence following the curve of the corner and the eastern side of Bhowanipore Road and the surplus lands attached thereto by a series of straight line links joining points marked by posts 122-124, boundary pillars W_1 , and X_1 , at the junction of Shambhunath Pandit Street and Bhowanipore Road, posts 125-128 turning eastward to boundary pillar Y_1 on the north side of Sankaripara Road, posts 129, 130 to boundary pillars Z_1 and A_2 across the entrance of Ketrapati Road into Bhowanipore Road; thence by posts 131, 132 to boundary pillar B_2 on the north-eastern side of Alipore Bridge; thence along a straight line joining the said boundary pillar B_2 with subsidiary reference pillar VII on the south-eastern side of the said bridge to a point where that straight line meets the water-line of Tolly's Nala; thence along the water-line of Tolly's Nala to the north-eastern corner of the District Magistrate's compound near which is boundary pillar C_2 ; thence along the irregular northern boundary of the Magistrate's compound marked by posts 133-141 to boundary pillar D_2 at the south corner of the entrance to the Civil Surgeon's house from Thackeray Road; thence southward along the western boundary of the Magistrate's compound by posts 142-145 and along the southern boundary of that compound marked by posts 147, 148 to boundary pillar E_2 on the bank of Tolly's Nala; thence continuing the straight line from post 148 to boundary pillar E_2 till it meets the water-line of Tolly's Nala; thence along the water-line of Tolly's Nala to a point in a direct line with the north side of the masonry drain running outside the Jail Garden near which is boundary pillar F_2 ; thence along the north side of the said drain in a straight line across Motee Jheel to post 149 against the boundary of the compound of the Magistrate's Court; thence northward along that boundary to post 150 and westward to post 151 and northward again along the boundary of the Army Clothing Agency to post 152; thence westward on the south side of the lane to boundary pillar G_2 at the north-western corner of the Police Hospital compound; thence along the wall of the Alipore Central Jail facing Belvedere Road and marked by pillars 153-157 to the north-western corner of the junction of Belvedere Road and Jail Lane following the corner eastward to post 158 and continuing along the south side of Jail Lane to post 159; thence by a straight line to boundary pillar H_2 at the acute corner of the junction of Reformatory Street with Jail Lane; thence to boundary pillar I_2 on the north-western side of Alipore Bridge; thence to boundary pillar

of 1919.]

(The Schedule.)

J₂ on the north-eastern side of the said bridge; thence by the solid south-western and western side of Bhowanipore Road marked by posts 160-167; thence following the western corner of the junction of Bhowanipore Road and Lower Circular Road to boundary pillar K₂; thence along the solid south side of Lower Circular Road following the sweep of the railings and marked by posts 168-172 to boundary pillar L₂ on Lower Circular Road and east of its junction with Belvedere Road; thence following the natural bends of the corner marked by posts 173 and 174 to boundary pillar M₂ on the eastern side of Belvedere Road; thence along the eastern side of Belvedere Road now indicated by wooden railings and marked by post 175 to boundary pillar N₂ on the north-eastern side of Zeerut Bridge; thence along the railings of the footpath on the eastern side of the bridge to boundary pillar O₂ near its south-eastern end; thence along a bent line following the shape of the bridge and marked by posts 176, 177 to post 178 on the eastern side of the south extremity of the immediate approach to the bridge; thence by a straight line to boundary pillar P₂ on the western side of the said extremity; thence turning north along the railings of the footpath on the western side of the bridge; till it meets the water-line underneath the bridge; thence along the water-line of the south or Alipore bank of Tolly's Nala trending northwards under Hastings Bridge, to a point where a straight line joining reference pillar V (near the south-western end of Hastings Bridge), to reference pillar VI (on the Howrah side of the river in the line with the northern wall of the Bengal-Nagpur Railway Goods Yard) meets the water-line of the south bank of the bend of the Hooghly River, near the western side of the opening of Tolly's Nala; thence continuing the said straight line till that said straight line meets the water-line of the Howrah side of the river Hooghly.

West.—A line commencing from the point last defined along the water-line of the Howrah side of the River Hooghly to the western extremity of the northern boundary.

2. (a) When the expression "water-line" is used in this schedule all *pucca ghats* and other objects permanently attached to the bank and in contact with the water shall be deemed to appertain to the area to which the land on that bank appertains, and the water in contact with such objects shall be deemed to appertain to the other side of the boundary. In the places in the Schedule where the boundary is thus described the boundary line shall be the moving edge of the water, wherever it may be at any time. In the case of bridges, however, the supporting pile in contact with the bank only shall be deemed to be permanently attached to the bank and the boundary line across the bridge to be immediately above the water-line so described.

(b) The expression "solid side" or "solid corner" means the line or spot marked out by solid objects, such as a *pucca* wall or the face of a house, the wayside lands and pavements thus being all included in the adjacent road, street or lane.

Part III

Local Act made by the Governor General under section 67B of the Government of India Act, in force in West Bengal.

[THE BENGAL CRIMINAL LAW AMENDMENT (SUPPLEMENTARY) ACT, 1925.]¹

(30th March, 1925.)

An Act to supplement the Bengal Criminal Law Amendment Act, 1925.

WHEREAS it is expedient to supplement the Bengal Criminal Law Amendment Act, 1925; It is hereby enacted as follows:—

1. This Act may be called the Bengal Criminal Law Amendment (Supplementary) Act, 1925.

Short
title.

2. In this Act,—

Defini-
tions.

(a) “ “ Code ” means the Code of Criminal Procedure, 1898; and

(b) “ local Act ” means the Bengal Criminal Law Amendment Act, 1925.

3. (1) Any person convicted on a trial held by Commissioners under the local Act may appeal to the High Court of Judicature at Fort William in Bengal, and such appeal shall be disposed of by the High Court in the manner provided in Chapter XXXI of the Code.

Appeals
and con-
firmations.

(2) When the Commissioners pass a sentence of death, the record of the proceedings before them shall be submitted to the High Court and the sentence shall not be executed unless it is confirmed by the High Court which shall exercise, in respect of such proceedings, all the powers conferred on the High Court by Chapter XXVII of the Code.

4 to 6. *Rep. by s. 5 of the Bengal Criminal Law Amendment (Supplementary) Act, 1932 (VIII of 1932).*

¹For Statement of Objects and Reasons, see the *Gazette of India*, 1925, Pt. V, page 79.

Part IV.

Regulations made under the Government of India Act, 1870, and the Government of India Act, 1935, in force in West Bengal.

(a).—*Regulations made under the Government of India Act, 1870, in force in West Bengal.*

REGULATION V OF 1873.

(BENGAL EASTERN FRONTIER REGULATION, 1873.)¹

Amended	...	Regn. V of 1925.
Repealed in part		{ Regn. I of 1880. Act I of 1903.
		(a) The Government of India (Adaptation of Indian Laws) Order, 1937.
Adapted	... ..	{ (b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.
		(c) The Adaptation of Laws Order, 1950.

(27th August, 1873.)

A Regulation for the peace and Government of certain districts on the Eastern Frontier of Bengal.

Preamble. [Whereas the Secretary of State for India in Council has by Resolution in Council, declared the provisions of Act 33 Vict., Chap. 3, section 1, to be applicable to the districts of Kāmrup, Darrang, Nawgong, Sibsāgar, Lakhimpur, Garo Hills², Khāsi and Jaintia Hills, Nāga Hills, Cachar³ * * * * *]

And whereas the Lieutenant Governor of Bengal has proposed to the Governor-General in Council a draft of the following Regulation, together with the reasons for proposing the same, for the peace and government of the said districts;

And whereas the Governor-General in Council has taken such draft and reasons into consideration, and has approved of such draft, and the same has received the Governor General's assent;

The following Regulation is now published in the *Gazette of India*, and will be published in the *Calcutta Gazette*, and will thereupon have the force of law, under the 33rd of Victoria, chapter 3.

Local extent.

1. [This Regulation shall extend to the districts named in the preamble, and shall come into force on the 1st of November, 1873.]

¹SHORT TITLE.—This short title was given by notification No. 13, dated the 11th October, 1875, published in the *Gazette of India*, 1875, Pt. I, page 529.

LOCAL EXTENT.—The only parts of Bengal in which this Regulation is in force are the districts of Jalpaiguri and Darjeeling, to which it was extended by notification No. 605 P., dated the 25th February, 1904.

²Regulation V of 1873, so far as it applies to the Garo Hills District, was repealed by the Repealing Act, 1897 (V of 1897).

³The words "and Chittagong Hills," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

(Sections 2-4.)

Power to
prescribe
and alter
inner
line.

2. It shall be lawful for the '[State Government] of '[West Bengal] * * * * * to prescribe, and from time to time to alter, by notification in the '[*Official Gazette*], a line to be called "The Inner Line" in each or any of the abovenamed districts⁵.

The '[State Government] may, by notification in the '[*Official Gazette*], prohibit all '[citizens of India or any class of such citizens], or any persons residing in or passing through such districts from going beyond such line without a pass under the hand and seal of the chief executive officer of such district, or of such other officer as he may authorize to grant such pass; and the '[State Government] may, from time to time, cancel or vary such prohibition.

Penalty
for cross-
ing line
without
pass.

3. Any * * * * * person so prohibited, who, after "The Inner Line" has been prescribed and notified in accordance with section 2 of this Regulation, goes beyond such line without a pass, shall be liable, on conviction before a Magistrate, '[to imprisonment of either description which may extend to one year, or to a fine not exceeding one thousand rupees, or to both].

Power to
prescribe
form of
pass.

4. The '[State Government] may from time to time prescribe, by notification in the '[*Official Gazette*], a form of pass for each district, and may in such form fix such restrictions or conditions as the '[State Government] may deem fit, and may require the payment of such dues and fees for such passes as to the '[State Government] may seem proper.

Any holder of such a pass shall, on breach of any such restriction or condition, be liable on conviction '[to imprisonment of either description which may extend to one year or to a fine not exceeding one thousand rupees, or to both].

¹The words "Provincial Government" were substituted for the words "Local Government" by paragraph 4 (I) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4 (I) of the Adaptation of Laws Order, 1950.

²Substituted for the word "Bengal" by para. 3 (2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³The words "with the previous sanction of the Governor General in Council" were omitted by para. 3 and Sch XI of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words were substituted for the words "*Calcutta Gazette*" by paragraph 4 (I), *ibid.*

⁵Now read (in Bengal) the districts of Jalpaiguri and Darjeeling.

⁶Substituted for the words "British subjects, or any class of British subjects," by para. 3 and the Third Schedule of the Adaptation of Laws Order, 1950.

⁷The words "British subject or other" were omitted, *ibid.*

⁸These words were substituted by sec. 2 of the Bengal Eastern Frontier (Amendment) Regulation, 1925 (Reg. V of 1925).

of 1873]

(Sections 5—7.)

5. ¹[(1)] Any rubber, wax, ivory or other jungle-product ²[or any book, diary, manuscript, map, picture, photograph, film, curio or article of religious or scientific interest] found in the possession of any person convicted of an offence under this Regulation may be confiscated to Government by an order to be passed at the time of conviction by the Magistrate.

Confiscation of jungle product found with offender.

³(2) If the Magistrate has reason to believe that any article which if found in the possession of a person convicted under this Regulation would have been liable to confiscation under sub-section (1) has been acquired or wholly or partly written, made or taken by such person beyond "The Inner Line," the Magistrate after giving the person in whose possession the article is found an opportunity to show cause why an order under this sub-section should not be passed in respect of the article may, unless it is proved that the article was not acquired, written, made or taken as aforesaid, order that such article be confiscated to Government.

6. The chief executive officer of any district comprised in any notification as aforesaid may, subject to the approval of the ⁴[State Government], authorize, by a written instrument under his hand, any public servant to arrest and bring before him with the least practicable delay—

Power to authorize arrest.

firstly, any person prohibited from crossing "The Inner Line" prescribed for such district, if such person shall be found beyond the line and when asked to produce his pass shall refuse or be unable so to do;

secondly, any person to whom a pass may have been granted, and who has committed any infraction of its conditions.

7. It shall not be lawful for any ⁵* * * * * person, not being a native of the districts comprised in the preamble of this Regulation, to acquire any interest in land or the product of land beyond the said "Inner Line" without the sanction of the ⁶[State Government] or such officer as the ⁷[State Government] shall appoint in this behalf.

Acquisition of interest in land by other than Natives of districts comprised in preamble.

Any interest so acquired may be dealt with as the ⁸[State Government] or its said officer shall direct.

¹Section 5 was re-numbered as sub-section (1) of section 5 by sec. 4 (1) of the Bengal Eastern Frontier (Amendment) Regulation, 1925 (Reg. V of 1925).

²These words were inserted by sec. 4 (1), *ibid*.

³Sub-section (2) was added by sec. 4 (2), *ibid*.

⁴See foot-note 1 on page 932, *ante*.

⁵The words "British subject or other" were omitted by para. 3 and the Third Schedule of the Adaptation of Laws Order, 1950.

[**Reg. V of 1873.**]

(Sections 8—11.)

The "[State Government] may also, by notification in the "[*Official Gazette*], extend the prohibition contained in this section to any class of persons, Natives of the said districts, and may from time to time in like manner cancel or vary such extension.

8 to 10. [*Killing or capturing elephants.*]- *Rep. by Reg. 1 of 1880.*

Jurisdiction as to offences.

11. **Offences** against this Regulation may be tried by Magistrates of the first or second class, and shall be bailable.

¹See foot-note 1 on page 932, *ante*.

²These words were substituted for the words "*Calcutta Gazette*" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

Bengal Regulation No. VII of 1942.

The Indian Post Office Act (Bengal Partially Excluded Areas Amendment) Regulation, 1942.

(9th July, 1942.)

A regulation to amend the Indian Post Office Act, 1898, in its application to the district of Darjeeling and to the partially excluded areas of the district of Mymensingh.

VI of 1898. Whereas it is expedient to amend the Indian Post Office Act, 1898, in its application to the district of Darjeeling and to the partially excluded areas of the district of Mymensingh in the manner hereinafter appearing;

It is hereby enacted as follows:

1. This Regulation may be called the Indian Post Office Act (Bengal Partially Excluded Areas Amendment) Regulation, 1942. Short title.
2. The Indian Post Office Act, 1898, shall, in its application to the district of Darjeeling * * * * * be amended in the manner hereinafter provided. Modified application of Indian Post Office Act, 1898, to the partially excluded areas.
3. In section 7 of the Indian Post Office Act, 1898 (hereinafter referred to as the said Act)--- Amendment of section 7 of Act VI of 1898.
 - (a) the proviso to sub-section (1) shall be omitted, and
 - (b) for sub-section (2) the following sub-section shall be substituted, namely: -

“(2) Unless and until such notification as aforesaid is issued the rates chargeable for the time being in the rest of * * * India shall be the rates chargeable in the district of Darjeeling * * * * *”
4. The First Schedule to the said Act shall be omitted. Omission of the First Schedule.

¹The words “and to the partially excluded areas of the district of Mymensingh”, were omitted by the Twelfth Schedule of the Adaptation of Laws Order, 1950.

²The word “British” was omitted, *ibid.*

³The words “and the partially excluded areas of the district of Mymensingh” were omitted, *ibid.*

Bengal Regulation No. IV of 1945.

The Bengal Rent (Darjeeling District Amendment) Regulation, 1945.

(6th September, 1945.)

A Regulation to amend the Bengal Rent Act, 1859 and the Bengal Rent Act, 1862, in their application to the district of Darjeeling.

X of 1859.
Ben. Act
VI of
1862.

Whereas it is expedient to amend the Bengal Rent Act, 1859 and the Bengal Rent Act, 1862, in their application to the district of Darjeeling in the manner hereinafter appearing;

It is hereby enacted as follows:—

1. This Regulation may be called the Bengal Rent (Darjeeling District Amendment) Regulation, 1945. Short title.
2. The Bengal Rent Act, 1859 and the Bengal Rent Act, 1862, shall, in their application to the district of Darjeeling, be amended in the manner hereinafter provided. Modified application of Act X of 1859 and Bengal Act VI of 1862 to the Darjeeling district.
3. In section 20 of the Bengal Rent Act, 1859, in its application to the district of Darjeeling for the word “twelve” the words “six and a quarter” shall be substituted. Amendment of section 20 of Act X of 1859.
4. In the first paragraph of section 2 and in section 3 of the Bengal Rent Act, 1862, for the word “twenty-five” the words “twelve and a half” shall be substituted. Amendment of sections 2 and 3 of Bengal Act VI of 1862.

West Bengal Regulation No. I of 1948.

The Indian Tea Control (Amendment) Darjeeling District Regulation, 1948.

(26th October, 1948.)

A regulation to apply the Indian Tea Control (Amendment) Act, 1948, to the district of Darjeeling.

XIX of
1948.

Whereas it is expedient to apply the Indian Tea Control (Amendment) Act, 1948, to the district of Darjeeling;

It is hereby enacted as follows:—

1. This Regulation may be called the Indian Tea Control (Amendment) Darjeeling District Regulation, 1948. Short title.

2. The Indian Tea Control (Amendment) Act, 1948, shall apply to the district of Darjeeling and shall be deemed to have been applied to the said district on and from the 1st day of April, 1948. Applica-
tion of
Act XIX
of 1948
to the
Darjeeling
district.

3. Anything done or any action taken or any proceedings commenced before the commencement of this Regulation which, if the Indian Tea Control (Amendment) Act, 1948, had applied to and come into force in the district of Darjeeling on and from the 1st day of April, 1948, could have been validly done, taken or commenced shall not be invalid by reason of the fact that the said Act did not so apply and come into force but shall be deemed to have been done, taken or commenced in exercise of the powers conferred by or under the Indian Tea Control Act, 1938, as amended by the Indian Tea Control (Amendment) Act, 1948, as if the Indian Tea Control (Amendment) Act, 1948, had applied to and come into force in the said district on and from the 1st day of April, 1948. Validation
of certain
acts and
proceed-
ings.

VIII of
1938.

